

DAVID TABOR ♦ Land Use Planning
1326 Kenwood Road Santa Barbara, CA 93109 805/966-3276

RECEIVED

November 10, 2006

City Council of the City of Santa Barbara
PO BOX 1990
Santa Barbara, CA 93102-1990

NOV 13 2006
LC 4:15
CITY CLERK'S OFFICE
SANTA BARBARA, CA

RE: 3408 A, B, C, & D STATE STREET/3412 STATE STREET
APPEAL OF PLANNING COMMISSION ACTION OF NOVEMBER 2, 2006,
DENYING APPLICATIONS FOR CONDOMINIUM CONVERSION

I am submitting this letter along with the appeal fee on behalf of the property owners, Bob and Debbie Hart, to appeal the actions of the Planning Commission to deny their condominium conversion project. They are seeking your approval for the Tentative Map and Condominium Conversion Permit to convert the four residential units and the office space into condominiums, and the Modification to maintain existing improvements in the required front yard. These applications were approved by the Staff Hearing Officer on July 19, 2006, but were denied by the Planning Commission on appeal.

As of this date, I am not in possession of the Planning Commission Resolution from the November 2, 2006 meeting. Based on the discussion at the hearing, I believe the findings necessary for approval of this project can be made, consistent with the actions of the Staff Hearing Officer. The project can be found to be consistent with all City Codes, followed the appropriate process as directed by City Staff, and is consistent with the General Plan.

The appellant was permitted to interject misleading information into the appeal process at the last minute. This appeal will allow the owners to address these questions.

Following my review of the Planning Commission Resolution, I will submit more directed written information.

I am looking forward to presenting this project to you at an upcoming meeting. Please call me if you have any questions.

Sincerely,



David Tabor AICP

cc: City Administrator
City Attorney
Community Development Director
Planning Division
11/14/06 LAC



City of Santa Barbara California

PLANNING COMMISSION STAFF REPORT

REPORT DATE: October 26, 2006
AGENDA DATE: November 2, 2006
PROJECT ADDRESS: 3408 and 3412 State Street (MST2004-00704)
TO: Planning Commission
FROM: Planning Division, (805) 564-5470
 Jan Hubbell, AICP, Senior Planner
 Kathleen Kennedy, Associate Planner

I. RECOMMENDATION

That the Planning Commission deny the appeal of the James Kahan, and uphold the Staff Hearing Officer's decision to approve the Modification to allow encroachments into the front yard setback along State Street, the Tentative Subdivision Map for a one-lot subdivision for the conversion of four residential units and one commercial office space into five condominium units and the Condominium Conversion Permit to convert one commercial space and four residential apartments to five condominium units, including an exception to the parking requirements, for the mixed-use development proposed at 3408 and 3412 State Street.

II. EXECUTIVE SUMMARY:

On July 19, 2006, the Staff Hearing Officer approved the application for the condominium conversion of an existing mixed-use development. On July 31, 2006, the appellant submitted a letter to the City appealing all approvals granted by the Staff Hearing Officer as well as the CEQA determination. The appeal letter further states that the approvals granted for the project exceed the scope of authority of the Staff Hearing Officer, that the appellant never received the public notice of the Staff Hearing Officer hearing, and that the mixed-use development was not given adequate review. Attached to the appeal letter are copies of email correspondence between the appellant and staff that occurred prior to the July 19, 2006 Staff Hearing Officer hearing, which focus on minor encroachments into the front yard setback (see Exhibit A). The applicant has submitted two letters in response to the appeal letter stating that the appeal has no merit and should be denied (see Exhibits B and C).

Staff asserts that the Staff Hearing Officer appropriately considered all relevant issues pertaining to the application and that the Planning Commission should deny the appeal, thereby upholding the Staff Hearing Officer's decision.

III. DISCUSSION:

A. PROJECT DESCRIPTION

The project consists of a proposal to convert an existing two-story, mixed-use building consisting of 3,436 square feet (net) of office space on the first floor and four (4) two-bedroom apartments on the second floor, into five condominium units. The proposal also includes a modification request to allow minor as-built first floor encroachments into the front yard setback and an exception to the physical standard requirements for condominium conversions, to allow only one parking space for each residential unit instead of two. Additional project details are provided in the attached Staff Hearing Officer staff report (see Exhibit D).

B. STAFF HEARING OFFICER ACTION

On July 19, 2006, the Staff Hearing Officer held a public hearing on the proposed project. No members of the public were present to speak. The Staff Hearing Officer approved the project, with minor revisions to the conditions of approval (see Exhibit E).

C. NOISE

When the existing mixed-use development was approved, a noise study was not required; however, a noise study was required during review of the condominium conversion application. The Noise Element Land Use Compatibility Guidelines state that the "normally acceptable" noise exposure for private outdoor living areas is 60 dBA Ldn or less. The noise study, prepared by Morris Engineering Company, dated January 18, 2006, concludes that the noise levels for the private outdoor living spaces for Units A and D are 62.5 CNEL and for Unit B is 60.5 CNEL (CNEL is equivalent to Ldn). The study further states that the noise levels could be reduced to below 60 CNEL if sound barriers were installed at each deck; however, sound barriers may not be acceptable to the Architectural Board of Review. Alternatively, because the decks are more than twice the size that is required by the ordinance, the required 96 square foot portion of each deck may conform with the noise guidelines, although this has not been verified by the noise consultant.

Staff recommends that the Planning Commission require compliance with the Noise Element by either requiring sound barriers on the decks of Units A, B and D or by requiring verification from the noise consultant that the required portion of the decks comply with 60 dBA Ldn. Alternatively, given that the existing noise levels are only slightly higher than 60 dBA Ldn and are below 70 dBA Ldn and therefore not considered a significant noise impact subject to CEQA review, and that the structure is currently existing and will not be reconstructed, the Planning Commission could determine that, in this instance, a finding of consistency with the General Plan noise guidelines can be made.

D. APPEAL ISSUES

1. All project approvals

The appellant appeals all approvals granted by the Staff Hearing Officer; however, the

email correspondence attached to the appeal letter focuses primarily on the issue of the modification for the minor as-built encroachments into the front yard setback. The email correspondence occurred prior to the July 19, 2006 Staff Hearing Officer hearing and staff believes that this issue regarding the modification had been addressed satisfactorily prior to the hearing.

The original one-story commercial building had a height of 19.5 feet and a front yard setback of approximately three feet; therefore, it was nonconforming to the SD-2 overlay zone which requires a 20 foot front yard setback for single story buildings that are greater than 15 feet tall. The mixed-use project, which was issued a building permit on September 9, 2005, consisted of the remodel of the first floor commercial space and the construction of four apartments on the second floor. The second floor, with a front yard setback of approximately 27 feet, exceeds the required 20 foot setback. The new construction on the first floor included minor encroachments that extended further into the 20 foot setback than already existed with the original building. These encroachments consisted of roof overhangs and columns on the first floor. As evidenced on page one and two of Exhibit E of the appeal letter, Staff acknowledged that a modification to allow the minor, first floor encroachments into the front yard setback should have been required when the mixed-use project was under review. Staff further states in response that the request for a modification would be required as part of the Condominium Conversion application and, in fact, this is what occurred.

The mixed-use development was reviewed by the Architectural Board of Review (ABR) and received final approval on April 12, 2004 (see Exhibit F). Since no new development was proposed with the condominium conversion application, the project was not required to be reviewed again by the ABR.

2. CEQA Determination

The appellant appeals the determination that the project is Categorically Exempt under California Environmental Quality Act. The Environmental Analyst determined that the project is exempt from further environmental review pursuant to the CEQA Guidelines Section 15301 (Existing Facilities), which includes conversions of existing multiple family or single-family residences into common-interest ownership and subdivision of existing commercial buildings where no physical changes occur which are not otherwise exempt.

The proposed project consists of converting an existing two-story, mixed-use building consisting of commercial office space on the first floor and four apartments on the second floor, into five condominium units. No physical changes are involved in the project. Per CEQA Guidelines, when using the Existing Facilities exemption, the key consideration is whether the project involves negligible or no expansion of an existing use. Because no physical changes are proposed, the exemption category clearly fits the project description. Further, the Environmental Analyst did not identify any exceptions (CEQA Guidelines Section 15300.2) to the use of the Categorical Exemption (e.g. the project does not result in any significant or cumulative impacts due to no physical changes to the environment, the project does not affect a scenic highway, a hazardous waste site or a historic resource).

3. Staff Hearing Officer Authority/ Notice of Public Hearing

The appellant asserts that the Staff Hearing Officer does not have the authority to make a decision regarding this project. SBMC§27.03.010 specifically states that the Staff Hearing Officer has the authority to review condominium conversion applications that involve four or fewer residential units, as well as non-residential condominium conversions. SBMC§28.92.050 states that, unless the application also requires a discretionary action by the Planning Commission, all modification requests shall be heard by the Staff Hearing Officer (see Exhibit G). The proposed project clearly falls under the jurisdiction of the Staff Hearing Officer.

The appellant asserts that the public notice of the Staff Hearing Officer hearing was not received. Occasionally, staff receives returned mail when addresses are no longer valid. In this case, two notices were sent to the appellant's address and none were returned to the City as undeliverable. The appellant's address is shown on the attached partial list of addresses that were sent public hearing notices for the project (see Exhibit H).

IV. RECOMMENDATION

Staff supports the proposed project and recommends that the Planning Commission deny the appeal, upholding the decision of the Staff Hearing Officer making the following findings and subject to the Conditions of Approval contained in Staff Hearing Officer Resolution No. 042-06.

A. FRONT YARD SETBACK MODIFICATION (SBMC§28.45.008)

The modification to allow the first floor additions to encroach into the front yard setback along State Street is consistent with the purposes and intent of the Zoning Ordinance, is necessary to secure an appropriate improvement on a lot, promote uniformity of improvement and prevent unreasonable hardship. The setback of the project is generally consistent with many other buildings on the northerly side of State Street between Las Positas/ San Roque Roads and Ontare Road and the building's second story is set back 26 feet. No additional habitable space was created as a result of the minor encroachment.

B. EXCEPTIONS TO THE PHYSICAL STANDARDS FOR CONDOMINIUM CONVERSIONS (SBMC§28.88.040.N)

The economic impact of meeting the standard of providing two parking spaces per residential unit is not justified by the benefits of doing so and the project includes design features or amenities which offset the project's failure to meet the standard. Additionally, parking demand will be met by sharing commercial spaces for this mixed use project. If the project had been constructed as a mixed-use condominium project, Zoning parking requirements would have been met.

C. TENTATIVE MAP (SBMC §27.07.100)

The tentative subdivision map is consistent with the General Plan and the Zoning

Ordinance of the City of Santa Barbara. The site is physically suitable for the proposed condominium conversion and the density of development, and the proposed use is consistent with the vision for this neighborhood of the General Plan. The design of the project is not likely to cause substantial environmental damage, and associated improvements will not cause serious public health problems or conflict with easements, acquired by the public at large, for access through or use of property within the proposed development.

D. CONDOMINIUM CONVERSION (SBMC§28.88.120)

1. All provisions of the Condominium Conversion Ordinance are met and the project will not be detrimental to the health, safety, and general welfare of the community.
2. The proposed conversion is consistent with the General Plan of the City of Santa Barbara.
3. The proposed conversion will conform to the Santa Barbara Municipal Code in effect at the time the application was deemed complete, except as otherwise provided in the Condominium Conversion Ordinance.
4. The overall design (including project amenities) and physical condition of the conversion will result in a project, which is aesthetically attractive, safe, and of quality construction.
5. The units have not been "affordable rental units" therefore; affordability restrictions do not apply to the project.
6. The project is exempt from the provisions of Section 28.88.130 because the project consists of fewer than five residential units.
7. The Applicant has not engaged in coercive retaliatory action regarding the tenants after the submittal of the first application for City review through the date of approval.

Exhibits:

- A.** Appeal Letter dated July 31, 2006
- B.** Applicant's Response to Appeal Letter dated August 18, 2006
- C.** Applicant's Response to Appeal Letter dated September 25, 2006
- D.** Staff Hearing Officer Staff Report dated July 12, 2006
- E.** Staff Hearing Officer Hearing Final Resolution and Minutes
- F.** Architectural Board of Review Minutes
- G.** SBMC§27.03.010 and SBMC§28.92.050 Excerpts
- H.** Mailed Notice Addresses

JAMES O. KAHAN
ATTORNEY AT LAW

3709 DIXON STREET
(FORMERLY MAGNOLIA LANE)
SANTA BARBARA, CALIFORNIA
93105-2419

TELEPHONE (805) 682-2972
FACSIMILE (805) 682-8914
E-MAIL jok@kahansb.com

July 31, 2006

Planning Commission
c/o Community Development Department
630 Garden Street
Santa Barbara, CA 93101

RECEIVED

JUL 31 2006

**CITY OF SANTA BARBARA
PLANNING DIVISION**

Re: Notice of Appeal of Staff Hearing Officer Approvals
Date of Actions: July 19, 2006, Agenda Item III.D
3408 and 3412 State Street

NOTICE OF APPEAL

I hereby appeal all approvals given by the Staff Hearing Officer on July 19, 2006 for the project at 3408 and 3412 State Street and the acceptance of the determination by the Environmental Analyst that this project qualifies for a Categorical Exemption under the California Environmental Quality Act (CEQA). These approvals include, without limitation:

1. Modification to allow encroachments into the front yard setback along State Street (SBMC§28.45.008);
2. Tentative Subdivision Map for a one-lot subdivision for the conversion of four residential units and one commercial office space into five condominium units (SBMC§27.07); and
3. Condominium Conversion Permit to convert one commercial space and four residential apartments to five condominium units, including an exception to the parking requirements (SBMC§28.88).

Moreover, the approvals that were granted for this project exceeded the scope of authority of the Staff Hearing Officer.

I further appeal this project because I never received notice from the City of this project despite that (1) I have requested that I (for both Allied Neighborhoods Organization and myself) receive notices of all hearings for discretionary projects in the Outer and Upper State Street area, (2) I have shown great concern about projects in the Outer and Upper State Street area and (3) I have extensively researched this project, determined there were violations, written to Paul Casey, Danny Kato and numerous others about the violations. Danny Kato initially denied there were violations, but finally admitted that there were violations. (see Exhibits A through E).

It is my belief that this condominium project would never have been approved but for it initially masquerading as an apartment project which was not given adequate review (no modification, no environmental analysis, no review by the ABR of the condominium conversion request, etc.)

Planning Commission

Notice of Appeal of Staff Hearing Officer Approvals, July 19, 2006, 3408 & 3412 State Street

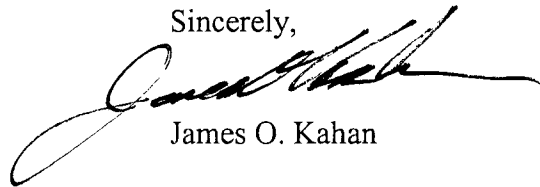
July 31, 2006

Page 2

After I have reviewed the tape of the hearing and other relevant documents and information, I will submit a written amplification of this appeal.

Submitted with this appeal is a check for \$180 which I have been told is the appeal fee.

Sincerely,

A handwritten signature in black ink, appearing to read "James O. Kahan", written in a cursive style.

James O. Kahan

Enclosures: [E-mails Exhibit A (February 24)
Exhibit B (March 10)
Exhibit C (March 21)
Exhibit D (April 10)
Exhibit E (April 11- 2 e-mails by Danny Kato)

James O. Kahan

From: James O. Kahan [jok@kahansb.com]
Sent: Friday, February 24, 2006 4:53 PM
To: Paul Casey (PCasey@SantaBarbaraCA.gov)
Cc: Kathleen Kennedy (KKennedy@SantaBarbaraCA.gov); Rob Dayton (rdayton@SantaBarbaraCA.gov); BWeiss@SantaBarbaraCA.gov; Browning Allen (ballen@ci.santa-barbara.ca.us); Tony Nisich (tnsich@SantaBarbaraCA.gov); James Armstrong (jarmstrong@SantaBarbaraCA.gov)
Subject: Outer State - Code violations and parking problems.

Paul

This letter will confirm our earlier conversation and fill in some of the details. You are aware that I am very interested in what occurs in Upper State and I have done a significant amount of research. We are all aware of the parking and circulation problems related to Trader Joe's/Surgical Center, 3905 State Street (Peet's Coffee, UPS, Sushi Teri) and the Coffee Bean and Tea Leaf at the intersection of State and De La Vina.

The first project that I mentioned to you today was the addition of four apartments to the Century 21 real estate building at 3408-12 State Street. This project does not comply with the required setback of 20 feet for a two story building in the S-D-2 zone. I anticipate that somebody might argue that the work is a legally permitted expansion for a nonconforming structure. However, the Municipal Code does not authorize such expansions. I refer you to S.B.M.C. § 28.87.030.D. For your convenience, I have attached a copy of Section 28.87.030. Moreover the first story appears to have less than the minimum setback of 10 feet in the S-D-2 zone. There is no record that this project ever received any type of modification. The only planning approval (other than ABR) that I have found is a red stamped image giving approval for planning that is stamped on the cover sheet of the plans and is initialed by somebody in your department. It is my understanding that there is now an application to convert these apartments to condominiums and Kathleen Kennedy is the planner for that project. PLEASE EXPLAIN TO ME HOW A PROJECT WAS APPROVED BY YOUR DEPARTMENT WHEN IT VIOLATED THE ZONING.

The second project we discussed was the Coffee Bean and Tea Leaf at the intersection of State Street and De La Vina. I calculated the square footage of the building as approximately 1,600 square feet but the plans list the floor area in excess of 1,700 square feet which means that the Municipal Code would require 16 or 17 parking spaces pursuant to S.B.M.C. § 28.90.100.J.4 (one parking space for every 100 square feet of floor area). I was told your Department only applies the requirement of 1 space per 100 square feet to the public area, but I see no such authorization in the Municipal Code. PLEASE EXPLAIN THIS TO ME.

Even if you applied the theory that your department uses to reduce the parking requirements, it failed to recognize the seating that was shown on the plans (40 seats for indoor seating and 20 seats for outdoor seating for a total of 60 seats, but the actual exterior seating is much more than is listed in the plans.) I view almost every fast food restaurant as a subcategory of a restaurant. In other words, almost every fast food restaurant is a restaurant, but not every restaurant is a fast food restaurant. Moreover, the parking requirements for fast food restaurants are usually greater than would be required for general restaurants. (The parking requirement for restaurants is the greater of 4 spaces for every 1,000 square feet or one space for every three seats.) If you calculated the parking requirements for the Coffee Bean based upon seating, the requirement would be 20 parking spaces for the 60 seats shown on the plan and many more for the actual number of seats and tables that exist. PLEASE EXPLAIN TO ME WHAT WENT WRONG WITH THE CALCULATIONS FOR THIS SITE. If the parking deficiency only affected the business involved it would not be so bad, but neighboring properties bear the brunt of the overflow and we have seen how neighborhood streets are used to park automobiles that should be parked on site. BY A COPY OF THIS E-MAIL, I AM REQUESTING THAT ROB DAYTON CONFIRM THAT THE ROOM (TURNING RADII) IS ADEQUATE ON THAT SITE FOR PARKING WHEN VEHICLES ARE BACKING UP TO EXIT FROM PARKING SPACES. The space seemed a little tight when I watched a few vehicles whose drivers were struggling as they were trying to exit.

Exh A page 1 of 2

7/31/2006

I assume that you also will have somebody in your department follow up on the parking problems and code violations in reference to 3901-17 State Street which I brought to your attention in my e-mail which I sent to you on February 14.

Jim

James O. Kahan
3709 Dixon Street (formerly Magnolia Lane)
Santa Barbara, California 93105-2419
E-mail - jok@kahansb.com
Telephone - 805-682-2972
Fax - 805-682-8914

Exh A page 2 of 2

7/31/2006

James O. Kahan

From: Kato, Danny [DKATO@SantaBarbaraCA.gov]
Sent: Friday, March 10, 2006 1:38 PM
To: jok@kahansb.com
Cc: Weiss, Bettie; Casey, Paul; Armstrong, Jim; Dayton, Rob; Allen, Browning; Nisich, Tony; Vincent, Scott; Morando, Mark; Salinas, Marisela; Kennedy, Kathleen
Subject: Century 21 and Parking Requirement for Fast Food Restaurants

Mr. Kahan

This email is in response to your email to Paul Casey, below, and will discuss the Century 21 building and our parking requirement for fast food restaurants.

CENTURY 21 BUILDING

The zoning for this property is C-2/SD-2. The C-2 Zone does not have setbacks for commercial or mixed use buildings. The SD-2 zone has a 10 foot setback for 1 story buildings, and a 20 foot setback for 2 story buildings. The existing building was nonconforming as to the SD-2 setback, as it was a single story building that was built about 3 feet from the front property line. The plan shows the front portion of the ground floor of the building to remain, with the addition of the second story.

The Zoning Ordinance allows the demolition and reconstruction of existing, nonconforming buildings (e.g. buildings that encroach into setbacks) and the addition of conforming additions (see SBMC Section 28.87.030.D.(5) and (6)) without Modifications. The portion of the building that encroaches into the front setback was rebuilt as allowed by the Zoning Ordinance, and the remaining portions of the building conform to the requirements of the C-2 and SD-2 Zones. Therefore, the project conforms to the Zoning Ordinance.

PARKING REQUIREMENT FOR FAST FOOD RESTAURANTS

The City has determined that cafés like Starbucks or Coffee Bean are the equivalent of fast food restaurants, for parking purposes. The City's administrative practice in Staff's interpretation of the Zoning Ordinance since at least 1990 (when I started working here), has been that fast food restaurants must provide parking at a ration of 1 space per 100 square feet of customer accessible area, and 1 space per 250 square feet of employee area. We believe this parking requirement to be adequate, as the high demand users are the customers, whereas the parking demand of the employee area is equivalent to any other retail, commercial or office space. This interpretation has been (and continues to be) applied to fast food restaurants all over the City, except in areas that have an overriding parking requirement, like the Central Business District (all uses based on 1 space per 500 square feet of floor area). Seating is not used to calculate parking for fast food restaurants or cafés.

For the Coffee Bean and Tea Leaf at State and De la Vina Streets, we measured the customer service area at 900 s.f. (9 parking spaces required), and the employee area at 800 s.f. (3.2 parking spaces, which rounds down to 3 parking spaces required) for a total parking requirement of 12 parking spaces. The project provided 12 parking spaces; therefore, it was approved.

It seems that this Coffee Bean establishment is very successful, and draws many customers. The City does not (probably cannot) require additional parking for successful businesses. A not-so-successful café (e.g. Bob's Coffee House - Home of Folgers Instant and General Mills International Coffees) would have the same parking requirement of 12 spaces.

Thank you for your interest.

Danny Kato
Zoning & Enforcement Supervisor

From: James O. Kahan [mailto:jok@kahansb.com]
Sent: Friday, February 24, 2006 4:53 PM
To: Casey, Paul
Cc: Kennedy, Kathleen; Dayton, Rob; Weiss, Bettie; Allen, Browning; Tony Nisich; Armstrong, Jim
Subject: Outer State - Code violations and parking problems.

7/31/2006

Exh. B page 1 of 2

Paul

This letter will confirm our earlier conversation and fill in some of the details. You are aware that I am very interested in what occurs in Upper State and I have done a significant amount of research. We are all aware of the parking and circulation problems related to Trader Joe's/Surgical Center, 3905 State Street (Peet's Coffee, UPS, Sushi Teri) and the Coffee Bean and Tea Leaf at the intersection of State and De La Vina.

The first project that I mentioned to you today was the addition of four apartments to the Century 21 real estate building at 3408-12 State Street. This project does not comply with the required setback of 20 feet for a two story building in the S-D-2 zone. I anticipate that somebody might argue that the work is a legally permitted expansion for a nonconforming structure. However, the Municipal Code does not authorize such expansions. I refer you to S.B.M.C. § 28.87.030.D. For your convenience, I have attached a copy of Section 28.87.030. Moreover the first story appears to have less than the minimum setback of 10 feet in the S-D-2 zone. There is no record that this project ever received any type of modification. The only planning approval (other than ABR) that I have found is a red stamped image giving approval for planning that is stamped on the cover sheet of the plans and is initialed by somebody in your department. It is my understanding that there is now an application to convert these apartments to condominiums and Kathleen Kennedy is the planner for that project. PLEASE EXPLAIN TO ME HOW A PROJECT WAS APPROVED BY YOUR DEPARTMENT WHEN IT VIOLATED THE ZONING.

The second project we discussed was the Coffee Bean and Tea Leaf at the intersection of State Street and De La Vina. I calculated the square footage of the building as approximately 1,600 square feet but the plans list the floor area in excess of 1,700 square feet which means that the Municipal Code would require 16 or 17 parking spaces pursuant to S.B.M.C. § 28.90.100.J.4 (one parking space for every 100 square feet of floor area). I was told your Department only applies the requirement of 1 space per 100 square feet to the public area, but I see no such authorization in the Municipal Code. PLEASE EXPLAIN THIS TO ME.

Even if you applied the theory that your department uses to reduce the parking requirements, it failed to recognize the seating that was shown on the plans (40 seats for indoor seating and 20 seats for outdoor seating for a total of 60 seats, but the actual exterior seating is much more than is listed in the plans.) I view almost every fast food restaurant as a subcategory of a restaurant. In other words, almost every fast food restaurant is a restaurant, but not every restaurant is a fast food restaurant. Moreover, the parking requirements for fast food restaurants are usually greater than would be required for general restaurants. (The parking requirement for restaurants is the greater of 4 spaces for every 1,000 square feet or one space for every three seats.) If you calculated the parking requirements for the Coffee Bean based upon seating, the requirement would be 20 parking spaces for the 60 seats shown on the plan and many more for the actual number of seats and tables that exist. PLEASE EXPLAIN TO ME WHAT WENT WRONG WITH THE CALCULATIONS FOR THIS SITE. If the parking deficiency only affected the business involved it would not be so bad, but neighboring properties bear the brunt of the overflow and we have seen how neighborhood streets are used to park automobiles that should be parked on site. BY A COPY OF THIS E-MAIL, I AM REQUESTING THAT ROB DAYTON CONFIRM THAT THE ROOM (TURNING RADIUS) IS ADEQUATE ON THAT SITE FOR PARKING WHEN VEHICLES ARE BACKING UP TO EXIT FROM PARKING SPACES. The space seemed a little tight when I watched a few vehicles whose drivers were struggling as they were trying to exit.

I assume that you also will have somebody in your department follow up on the parking problems and code violations in reference to 3901-17 State Street which I brought to your attention in my e-mail which I sent to you on February 14.

Jim

James O. Kahan
3709 Dixon Street (formerly Magnolia Lane)
Santa Barbara, California 93105-2419
E-mail - jok@kahansb.com
Telephone - 805-682-2972

Exh B page 1 of 2

7/31/2006

James O. Kahan

From: James O. Kahan [jok@kahansb.com]
Sent: Tuesday, March 21, 2006 12:40 PM
To: 'Kato, Danny'
Cc: 'Weiss, Bettie'; 'Casey, Paul'; 'Armstrong, Jim'; 'Dayton, Rob'; 'Allen, Browning'; 'Nisich, Tony'; 'Vincent, Scott'; 'Morando, Mark'; 'Salinas, Marisela'; 'Kennedy, Kathleen'; Steve Wiley (swiley@ci.santa-barbara.ca.us)
Subject: Re: 3052 De La Vina Street (Coffee Bean And Tea Leaf) RE: Century 21 and Parking Requirement for Fast Food Restaurants
Importance: High

Mr. Casey:

Danny Kato sent me an e-mail on behalf of your Department which attempted to respond to an e-mail that I sent to you which made complaints about two properties (Century 21 and Coffee Bean and Tea Leaf). His e-mail misstated Santa Barbara's zoning law and misapplied it to the facts of these two existing situations. I believe that your Department's e-mail was attempting to justify obvious legal mistakes by your Department which Mr. Kato neither made nor participated in the decision to issue a building permit based upon erroneous interpretations of the City's Zoning Ordinance. I want to stress that the Coffee Bean and Tea Leaf involved the conversion of a long abandoned service station use (Union 76) with a minimal parking requirement to a much more intensive use with one of the highest, if not the highest, parking requirements in the Zoning Ordinance.

I do not believe that there is any dispute that the parking for the Coffee Bean and Tea Leaf is inadequate for its customers, its employees, for loading or unloading, adjacent properties or neighborhoods. There is no on-site parking for its employees nor a place for loading/unloading of provisions or other supplies. Moreover, the turning radii for its parking seem inadequate.

For your better understanding of how the Coffee Bean and Tea Leaf creates parking problems – on-site, on adjacent properties and streets and by intrusion into adjacent neighborhoods, I refer you to the CD-R disc that I filed in support of the Lofts appeal. That CD-R disc contained several hundred pictures that showed both the good and the bad in Outer State and included the Coffee Bean and Tea Leaf. I will either attach pictures to this response/complaint or separately send copies to you.

I have previously sent e-mails to you and communicated with you about unnecessary parking problems resulting from failure to comply with the minimum requirements of the Zoning Ordinance by either granting modifications or making improper calculations of the parking requirements. Moreover the ITE (Institute of Transportation Engineers) Trip Generation Manual has created many problems for City of Santa Barbara, its residents and its businesses.

This e-mail will focus on the Coffee Bean and Tea Leaf (3052 De La Vina Street). Your Department's responding e-mail that was sent to me does not apply the law, but relies on the City's incorrect administrative practice (Staff's interpretation of the law) rather than the actual law. That e-mail said that the City calculated the parking requirements with a greater requirement for the customer accessible areas (1 parking space per 100 square feet) of the fast food restaurant and lesser parking requirement for the employee area (1 parking space per 250 square feet). HOWEVER, THERE IS NO PROVISION IN THE ZONING ORDINANCE TO ALLOW SUCH A REDUCTION OF THE REQUIRED NUMBER OF PARKING SPACES. Every fast food restaurant qualifies as a restaurant under Santa Barbara's Zoning Ordinance, but not every restaurant is a fast restaurant. To ignore the parking requirements for outdoor seating in a restaurant ignores both the Code and reality.

In my February 24, 2006 e-mail to you, I referred you to S.B.M.C. Section 28.90.100.J.4. But your Department's response indicates that I failed to make my point that the Zoning Ordinance required more parking than was required for the Coffee Bean and Tea Leaf. In light of that your Department's response, I will start with analyzing the law.

APPLICABLE LAW

Chapter 28.04 of Title 28 (Zoning Ordinance) contains definitions. The most relevant of those definitions to this Zoning Ordinance are:

28.04.050 Automobile Service Station.

“A retail business establishment primarily supplying gasoline, other types of fuel, oil, minor

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accessories and services for motor vehicles, excluding painting, body work and steam cleaning."

28.04.235 Fast Food Restaurant.

"A fast food restaurant is any establishment whose principal business is the sale of foods, frozen desserts or beverages to the customer in a ready-to-consume state for consumption either within the restaurant building or for carry-out with consumption off the premises, and whose design or principal method of operation includes foods, frozen desserts, or beverages that are usually served in edible containers or in paper, plastic, or other disposable containers."

Chapter 28.90 of Title 28 contains the minimum requirements and standards for the provision of off-street parking for all buildings, structures and uses in the City of Santa Barbara. Section 28.90.001 of Chapter 28.90 contains the general requirements. Some of its most relevant subsections state:

2. EXISTING PARKING SPACE. Where automobile parking space provided and maintained on a lot in connection with a main building or structure at the time this title becomes effective is insufficient to meet the requirements for the use with which it is associated, or where no such parking has been provided, said building or structure may be altered or enlarged, provided additional automobile parking spaces are provided to meet the standards for use in conformity with the requirements set forth in this chapter for the enlargement, extension or addition proposed. However, if an enlargement is more than fifty percent (50%) of the existing floor area, then parking shall be brought up to the current standards for the entire lot.

3. COLLECTIVE USE OF SPACE. Nothing in this Title shall prohibit the collective use of space for off street parking. The collective space shall remain available to all occupants and users of structures for which said permit is issued.

6. LOADING SPACE. On the same premises with every building, structure or part thereof erected or occupied for any use, truck loading space shall be required if loading interferes with short-term or visitor parking. The requirements for such loading space shall be determined and approved in writing by the City's Transportation Engineer.

14. CHANGE OF USE. Whenever the type of use of any existing building is changed to another type of use that requires more parking spaces under this Chapter than were required for the prior use, there shall be provided additional permanently maintained parking spaces as required by this chapter for said building and any other existing buildings located on the parcel or parcels. The number of required additional parking spaces under this subsection shall be computed by determining if the number of parking spaces required for the new use is greater than that required for the previous use under this Chapter. If there is an increased number of parking spaces required for the new use, that increased number of additional parking spaces shall be added to the number of parking spaces required for the prior legal conforming or non-conforming use and the total of these two numbers shall be the number of parking spaces required for the new use."

Section 28.90.045 of Chapter 28.90 establishes Parking Design Standards. Some of its most relevant subsections state:

1. REQUIREMENTS. All parking facilities must be designed and constructed pursuant to the following:

b. All turnaround movements shall be accomplished in one (1) maneuver. One (1) maneuver is considered to be one (1) back up and one (1) forward movement.

c. The required dimensions and criteria for parking plans and vehicle ramps shall be as shown in the current City Standard for Parking Design as prepared by the Transportation Engineer and on file with the City Clerk."

Section 28.90.060 of Chapter 28.90 requires the **Availability of Parking Spaces and Maneuvering Areas** and states:

"All required parking spaces and areas for maneuvering of vehicles on all parking lots shall be available for parking and maneuvering of motor vehicles and shall not be used for storage of any items inconsistent with such availability."

Section 28.90.100 of Chapter 28.90 contains the zoning requirements for parking. Some of its most relevant

subsections state:

A. **GENERAL.** Parking shall be provided for any use in the City of Santa Barbara.

I. **OFFICE, COMMERCIAL AND INDUSTRIAL USES.** In any zone, except as provided in Sections 28.90.100.J and 28.90.100.K of this Chapter, for all office and commercial buildings, one (1) parking space shall be provided for each two hundred fifty (250) square feet of gross floor area or fraction thereof. For all general industrial uses, one (1) parking space shall be provided for each five hundred (500) square feet of floor area or fraction thereof.

J. **PARKING REQUIREMENTS FOR SPECIFIC USES.** In any zone, for the following uses parking spaces shall be in the following ratios for specific types of use:

2. **Automobile service stations:** three (3) parking spaces for each grease rack. Grease racks, pump blocks and other service areas shall not be considered as parking spaces. Bicycle parking not required.

7. **Fast food restaurant:** one (1) space per 100 square feet. Bicycle parking required.

16. **Restaurant:** the greater of four (4) spaces per 1000 square feet or one (1) space per three (3) seats. Bicycle parking required.

Fast food restaurants have the greatest parking requirement of any use in the City of Santa Barbara. The parking requirements for fast food restaurants establish the very strict requirement of one parking space for every 100 square feet of floor area. The Municipal Code does not contain an exception for an employee area, a restroom, storage area or any other area of a fast food restaurant.

If you disagree with me about these laws, concepts and principles, please advise me as soon as possible and furnish me with the authority upon which you base your decision.

IMPROPER APPLICATION OF FACTS TO THE LAW

The site where the Coffee Bean and Tea Leaf is located previously had an Union 76 automobile service station, but that use had been abandoned for many years prior to the construction of the Coffee Bean and Tea Leaf (fast food) restaurant. Since the Coffee Bean and Tea Leaf was a new use with a new building, the zoning requirements which were applicable at the time that the building permit was issued are applicable. The square footage numbers in your Department's e-mail that responded to me stated that the Coffee Bean and Tea Leaf had 900 square feet of floor area that was accessible to customers and an employee area of 800 square feet which would have been a total floor area of 1,700 square feet. If the less restrictive restaurant requirements were applied to the Coffee Bean, 20 parking spaces should have been required pursuant to the plans that had been submitted (one space per 3 seats). If the fast food restaurant parking requirements as set forth in the Zoning Ordinance had been applied, 17 parking spaces would have been required.

I do not understand how 12 parking spaces were properly and legally squeezed onto the Coffee site. There is no provision for loading/unloading nor for employee parking. It seems to me that the design of the parking spaces is very tight with inadequate space to backup and I do not know if it complies with the City's minimum standards. Since I have not reviewed those standards, I will defer to the Transportation Division.

CONCLUSION

As part of the Lofts appeal, I filed a disc that contained several hundred pictures that showed both the good and the bad in Outer State. Among the bad, were several pictures of the Coffee Bean and the surrounding areas. I refer you to that disc and the accompanying e-mail.

I recognize that your Department and other City entities can do very little to correct the parking situation at the Coffee Bean. In light of the situation, I am making following three requests of you:

1. Recognize that I have set forth herein the correct method for calculating the number of parking spaces as required by the Zoning Ordinance.

2. Take steps to end the incorrect administrative practice and utilize methods to calculate the number of parking spaces so that there is compliance with the Zoning Ordinance.

3. Determine who, how and why concerning the approval of the substandard parking for the Coffee Bean and Tea Leaf. Failure of a government to comply with its laws will foster disrespect for the government and raises some very unpleasant the conclusions.

I trust that you will try to make things right.

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[I apologize for any typos but I wanted to get the gist to you ASAP so that there are not any more illegal approvals, especially in obvious places.]

James O. Kahan
3709 Dixon Street (formerly Magnolia Lane)
Santa Barbara, California 93105-2419
E-mail - jok@kahansb.com
Telephone - 805-682-2972
Fax - 805-682-8914

From: Kato, Danny [mailto:DKATO@SantaBarbaraCA.gov]

Sent: Friday, March 10, 2006 1:38 PM

To: jok@kahansb.com

Cc: Weiss, Bettie; Casey, Paul; Armstrong, Jim; Dayton, Rob; Allen, Browning; Nisich, Tony; Vincent, Scott; Morando, Mark; Salinas, Marisela; Kennedy, Kathleen

Subject: Century 21 and Parking Requirement for Fast Food Restaurants

Mr. Kahan

This email is in response to your email to Paul Casey, below, and will discuss the Century 21 building and our parking requirement for fast food restaurants.

CENTURY 21 BUILDING

The zoning for this property is C-2/SD-2. The C-2 Zone does not have setbacks for commercial or mixed use buildings. The SD-2 zone has a 10 foot setback for 1 story buildings, and a 20 foot setback for 2 story buildings. The existing building was nonconforming as to the SD-2 setback, as it was a single story building that was built about 3 feet from the front property line. The plan shows the front portion of the ground floor of the building to remain, with the addition of the second story.

The Zoning Ordinance allows the demolition and reconstruction of existing, nonconforming buildings (e.g. buildings that encroach into setbacks) and the addition of conforming additions (see SBMC Section 28.87.030.D.(5) and (6)) without Modifications. The portion of the building that encroaches into the front setback was rebuilt as allowed by the Zoning Ordinance, and the remaining portions of the building conform to the requirements of the C-2 and SD-2 Zones. Therefore, the project conforms to the Zoning Ordinance.

PARKING REQUIREMENT FOR FAST FOOD RESTAURANTS

The City has determined that cafés like Starbucks or Coffee Bean are the equivalent of fast food restaurants, for parking purposes. The City's administrative practice in Staff's interpretation of the Zoning Ordinance since at least 1990 (when I started working here), has been that fast food restaurants must provide parking at a ration of 1 space per 100 square feet of customer accessible area, and 1 space per 250 square feet of employee area. We believe this parking requirement to be adequate, as the high demand users are the customers, whereas the parking demand of the employee area is equivalent to any other retail, commercial or office space. This interpretation has been (and continues to be) applied to fast food restaurants all over the City, except in areas that have an overriding parking requirement, like the Central Business District (all uses based on 1 space per 500 square feet of floor area). Seating is not used to calculate parking for fast food restaurants or cafés.

For the Coffee Bean and Tea Leaf at State and De la Vina Streets, we measured the customer service area at 900 s.f. (9 parking spaces required), and the employee area at 800 s.f. (3.2 parking spaces, which rounds down to 3 parking spaces required) for a total parking requirement of 12 parking spaces. The project provided 12 parking spaces; therefore, it was approved.

It seems that this Coffee Bean establishment is very successful, and draws many customers. The City does not (probably cannot) require additional parking for successful businesses. A not-so-successful café (e.g. Bob's Coffee House - Home of Folgers Instant and General Mills International Coffees) would have the same parking requirement of 12 spaces.

Thank you for your interest.

Danny Kato
Zoning & Enforcement Supervisor

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From: James O. Kahan [mailto:jok@kahansb.com]
Sent: Friday, February 24, 2006 4:53 PM
To: Casey, Paul
Cc: Kennedy, Kathleen; Dayton, Rob; Weiss, Bettie; Allen, Browning; Tony Nisich; Armstrong, Jim
Subject: Outer State - Code violations and parking problems.

Paul

This letter will confirm our earlier conversation and fill in some of the details. You are aware that I am very interested in what occurs in Upper State and I have done a significant amount of research. We are all aware of the parking and circulation problems related to Trader Joe's/Surgical Center, 3905 State Street (Peet's Coffee, UPS, Sushi Teri) and the Coffee Bean and Tea Leaf at the intersection of State and De La Vina.

The first project that I mentioned to you today was the addition of four apartments to the Century 21 real estate building at 3408-12 State Street. This project does not comply with the required setback of 20 feet for a two story building in the S-D-2 zone. I anticipate that somebody might argue that the work is a legally permitted expansion for a nonconforming structure. However, the Municipal Code does not authorize such expansions. I refer you to S.B.M.C. § 28.87.030.D. For your convenience, I have attached a copy of Section 28.87.030. Moreover the first story appears to have less than the minimum setback of 10 feet in the S-D-2 zone. There is no record that this project ever received any type of modification. The only planning approval (other than ABR) that I have found is a red stamped image giving approval for planning that is stamped on the cover sheet of the plans and is initialed by somebody in your department. It is my understanding that there is now an application to convert these apartments to condominiums and Kathleen Kennedy is the planner for that project. PLEASE EXPLAIN TO ME HOW A PROJECT WAS APPROVED BY YOUR DEPARTMENT WHEN IT VIOLATED THE ZONING.

The second project we discussed was the Coffee Bean and Tea Leaf at the intersection of State Street and De La Vina. I calculated the square footage of the building as approximately 1,600 square feet but the plans list the floor area in excess of 1,700 square feet which means that the Municipal Code would require 16 or 17 parking spaces pursuant to S.B.M.C. § 28.90.100.J.4 (one parking space for every 100 square feet of floor area). I was told your Department only applies the requirement of 1 space per 100 square feet to the public area, but I see no such authorization in the Municipal Code. PLEASE EXPLAIN THIS TO ME.

Even if you applied the theory that your department uses to reduce the parking requirements, it failed to recognize the seating that was shown on the plans (40 seats for indoor seating and 20 seats for outdoor seating for a total of 60 seats, but the actual exterior seating is much more than is listed in the plans.) I view almost every fast food restaurant as a subcategory of a restaurant. In other words, almost every fast food restaurant is a restaurant, but not every restaurant is a fast food restaurant. Moreover, the parking requirements for fast food restaurants are usually greater than would be required for general restaurants. (The parking requirement for restaurants is the greater of 4 spaces for every 1,000 square feet or one space for every three seats.) If you calculated the parking requirements for the Coffee Bean based upon seating, the requirement would be 20 parking spaces for the 60 seats shown on the plan and many more for the actual number of seats and tables that exist. PLEASE EXPLAIN TO ME WHAT WENT WRONG WITH THE CALCULATIONS FOR THIS SITE. If the parking deficiency only affected the business involved it would not be so bad, but neighboring properties bear the brunt of the overflow and we have seen how neighborhood streets are used to park automobiles that should be parked on site. BY A COPY OF THIS E-MAIL, I AM REQUESTING THAT ROB DAYTON CONFIRM THAT THE ROOM (TURNING RADIUS) IS ADEQUATE ON THAT SITE FOR PARKING WHEN VEHICLES ARE BACKING UP TO EXIT FROM PARKING SPACES. The space seemed a little tight when I watched a few vehicles whose drivers were struggling as they were trying to exit.

I assume that you also will have somebody in your department follow up on the parking problems and code violations in reference to 3901-17 State Street which I brought to your attention in my e-mail which I sent to you on February 14.

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7/31/2006

Jim

James O. Kahan
3709 Dixon Street (formerly Magnolia Lane)
Santa Barbara, California 93105-2419
E-mail - jok@kahansb.com
Telephone - 805-682-2972
Fax - 805-682-8914

Exh C page 6 of 6

James O. Kahan

From: Weiss, Bettie [bweiss@SantaBarbaraCA.gov]
Sent: Monday, April 10, 2006 4:48 PM
To: James O. Kahan; Armstrong, Jim; McMillion, Deana
Cc: Casey, Paul; Wiley, Stephen; Hubbell, Jan; Kato, Danny; Morando, Mark; Salinas, Marisela; Nisich, Tony; Allen, Browning; Dayton, Rob; Barnwell, Brian B.; Williams, Das; House, Grant; Grant House; Schneider, Helene; Falcone, Iya; Blum, Marty; Horton, Roger; Addison Thompson; Bendy White; Charmaine Jacobs; George Myers; John Jostes; Stella Larson; William Mahan
Subject: RE: 3412 State Street (Century 21) - Zoning Irregularities - Upper State FW: 3412 State Street (Century 21) RE: Century 21 and Parking Requirement for Fast Food Restaurants

Hi Jim, Jim, Deana, Mayor & Council, PC, and everyone:

First, on the notice for any hearing related to property within the SD-2. Deana and our administrative staff currently include the Allied Neighborhood Association and related neighborhood groups (Grove Lane, Foothill, etc) notice of projects in the neighborhoods. We maintain these lists based on current info provided by neighborhood groups. I believe we have already responded to this request, but I am asking Deana to double check as to your notification request.

Please be advised that the City Council will hold a meeting on January 25 to discuss their earlier direction to look at a study of Upper State Street. The City Clerk will not be sending a mailed notice for this discussion but we want to be sure that you know about it.

Second, please do not assume that we have no need to respond to your emails because we believe they are correct. We have a number of staff to consult on these matters including the City Administrator, City Attorney and various Land Development Team staff, and new important requests for information come up daily at the City. Further because we have already looked into these issues, we may have little additional input for you.

Century 21 - I am aware that a front yard encroachment determination for Century 21 will be forth coming, and that may be new information. On other matters, I believe our earlier responses will for the most part stand as we communicated before.

Parking concerns - I have seen a couple of emails to you from Rob Dayton, but I am not certain if more info is forthcoming on that issue.

Thank you for your patience , Danny & I will get back to you soon about the remaining issue of Century 21.

Thank you,
Bettie
Bettie Weiss, City Planner
Community Development Dept.
City of Santa Barbara
(805) 564-5470

Exh D page 1 of 6

From: James O. Kahan [mailto:jok@kahansb.com]
Sent: Monday, April 10, 2006 4:17 PM
To: Armstrong, Jim
Cc: Casey, Paul; Wiley, Stephen; Weiss, Bettie; Hubbell, Jan; Kato, Danny; Morando, Mark; Salinas, Marisela; Nisich, Tony;

7/31/2006

Allen, Browning; Dayton, Rob; Barnwell, Brian B.; Williams, Das; House, Grant; Grant House; Schneider, Helene; Falcone, Iya; Blum, Marty; Horton, Roger; Addison Thompson; 'Bendy White'; 'Charmaine Jacobs'; 'George Myers'; 'John Jostes'; 'Stella Larson'; 'William Mahan'

Subject: 3412 State Street (Century 21) - Zoning Irregularities - Upper State FW: 3412 State Street (Century 21) RE: Century 21 and Parking Requirement for Fast Food Restaurants

Importance: High

Mr. Armstrong

I am writing to you because I have not received a response to my e-mail (see below) to Paul Casey with copies to Bettie Weiss, Kathleen Kennedy, Danny Kato, Marisela Salinas, Mark Morando, Tony Nisich, Browning Allen, Rob Dayton, Steve Wiley and you, dated March 20. I initially sent my Complaint to Paul Casey on February 24, but I received an unacceptable answer for reasons set forth in my e-mail, dated March 20. I assume that my March 20 legal analysis was correct because I have not received any response from the City for more than three weeks.

As part of my research to prepare for the appeal of the State Street Lofts project, I did a massive amount of research relating to Upper State, especially concerning problem properties. I also took hundreds of pictures of the good things in Upper State, problem properties and other happenings in Upper State. As part of the appeal, I submitted a CD-R disc which contained hundreds of these pictures.

I advised your staff of some of the most glaring problems with separate e-mails that discussed specific problems. I am requesting that the City answer my complaints/inquiries about the referenced property and advise me as to its course of action for this violation of the S-D-2 zoning.

I AM ALSO REQUESTING THAT YOU SEND ME NOTICES OF ANY LAND USE ACTION (modifications, variances, subdivision maps, condominium conversions, CUPs, PUDs, etc.) THAT THE CITY INTENDS TO TAKE IN THE S-D-2 OVERLAY ZONE. I am make this request in my capacity as president of Allied Neighborhoods Association, chairperson of the Grove Lane Area Neighborhood Association (GLANA) and as a private individual.

Thank you in advance for your prompt attention to my requests.

James O. Kahan
3709 Dixon Street (formerly Magnolia Lane)
Santa Barbara, California 93105-2419
E-mail - jok@kahansb.com
Telephone - 805-682-2972
Fax - 805-682-8914

From: James O. Kahan [<mailto:jok@kahansb.com>]

Sent: Monday, March 20, 2006 9:30 AM

To: 'Kato, Danny'

Cc: 'Weiss, Bettie'; 'Casey, Paul'; 'Armstrong, Jim'; 'Dayton, Rob'; 'Allen, Browning'; 'Nisich, Tony'; 'Vincent, Scott'; 'Morando, Mark'; 'Salinas, Marisela'; 'Kennedy, Kathleen'; Steve Wiley (swiley@ci.santa-barbara.ca.us)

Subject: 3412 State Street (Century 21) RE: Century 21 and Parking Requirement for Fast Food Restaurants

Importance: High

Mr. Casey:

Danny Kato sent me an e-mail on behalf of your Department which attempted to respond to an e-mail that I sent to you which made complaints about two properties. His e-mail misstated Santa Barbara's zoning law and misapplied it to the facts of two existing situations. I have the feeling that he was attempting to justify obvious legal mistakes by your Department.

For your better understanding of how the Century 21 building so conflicts with a vision of a better State Street without adequate setbacks, I have attached six pictures of the Century 21 building to highlight the points made in this complaint and explanation. (I will send them separately.) The Century 21 building really messes up the opportunity we now have for Upper State. Bendy White

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gave the best analogy when he said that we now have a blank canvas on Upper State, we can paint something beautiful on it and we should not squander this opportunity. And the existing Century 21 building is a step towards destroying that opportunity. The City might not be able to do any thing about the inadequate setbacks for the Fidelity Building and the connected three story condominium building (especially along Hope Avenue), but the Century 21 building is something upon which the City can take decisive action.

This e-mail will focus on the Century 21 (3412 State Street) because an application is now pending for a condominium conversion and this illegal approval has been and will be used as a precedent for encroaching construction along Upper State Street. Based upon what was said at last week's joint meeting of the City Council and Planning Commission, I do not believe that this project should be considered by the Staff Hearing Officer. It should be brought out into the daylight at public hearing before the Planning Commission.

The Century 21 building looks better than its predecessor, but it is an illegal in-your-face encroachment into the minimum front yard setback for State Street. It undoes the last 27 years of planning to achieve setbacks along State Street pursuant to the S-D-2 zoning that was adopted in 1979. It will limit future planning for wide open spaces along Upper State Street and will establish a bad precedent. It was cited by the developer of the State Street Lofts project as a precedent for Upper State Street to the extent that its presentation even showed a picture of the Century 21 building. Fortunately, the second story elements of the Century 21 building are set back approximately 24.5 feet from the front property line (from the edge of the sidewalk), but a survey will be needed to determine the actual setback. The encroaching 20 feet of the first story can easily be removed and severed which would allow the remaining first story elements of 4.5 feet to be blended attractively into the two story portions of the building. Good design will prevent it from looking like an amputation. It is my guess that the architect knew what he was doing and was willing to take the chance because he designed the encroaching first story elements for easy removal.

In my February 24, 2006 e-mail to you, I referred you to S.B.M.C. Section 28.87.030.D and even attached a copy for your convenience. Mr. Kato's e-mail response referred to S.B.M.C. Section 28.87.030.D, but he did not adequately analyze it. Here I merely gave conclusions. In light of that response, I will start with analyzing the law.

APPLICABLE LAW

The front yard setbacks for the S-D-2 zone are established in S.B.M.C. Section 28.45.008.D.4 which states:

"D. STANDARDS. The following standards shall apply to all projects in the S-D-2 Zone:

4. Front Yard Setbacks. There shall be a front yard of not less than ten (10) feet for one story buildings not exceeding fifteen (15) feet in height and not less than twenty (20) feet for two and three story buildings not exceeding forty-five (45) feet in height."

The law applicable to nonconforming buildings is set forth in S.B.M.C. Section 28.87.030.D which states in relevant part as follows:

"D. NONCONFORMING BUILDINGS. The following provisions shall apply to all nonconforming buildings and structures or parts thereof legally existing at the effective date of this title.

1. Any nonconforming building or structure may be maintained, improved, or altered only as follows:

a. **Improvements that do not change the use or the basic, exterior characteristics or appearance of the building or structure are allowed.** Such improvements include but are not limited to the following:

(2) The replacement of structural members, such as studs, rafters, joists, beams, or other structural members, except where it will result in an **increase in roof pitch;**

(5) The demolition and replacement of the nonconforming building or structure, provided that the following conditions are met:

(a) **The basic, exterior characteristics of the replacement building or structure is not changed,** except as allowed in this Section;

(b) **The new structure complies with all applicable height and building story limitations;** and

(6) **Additions that conform to the current Zoning standards for the zone.**

b. Minor improvements that change the exterior characteristics are allowed. Such minor improvements are limited to the following:

(1) The replacement of exterior wall coverings with the same or different materials;

(2) **The replacement of roofing materials with the same or different materials, except those that require an increase in roof pitch;**

(3) Reduction in the number or size of window or door openings;

(4) Replacement of existing windows or doors where there is no increase in opening size, or changes in the location of the windows or doors."

The zoning laws generally have provisions to allow the repair, maintenance and continuance of nonconforming buildings and other structures. However, these laws do not generally allow expansion of those structures. The Santa Barbara Zoning Ordinance is in accord with those general principles.

If you disagree with me about these concepts and principles, please advise me as soon as possible so that I can furnish you with

authority on these general planning and legal principles.

IMPROPER APPLICATION OF FACTS TO THE LAW

The prior building that housed Century 21 was a relatively low key one story structure. (pictures of the prior building should be shown on the plans for the new two story building or should be in your Department's ABR files which I never saw as part of my Public Records request). The prior building was relatively small in scale in contrast to its two story replacement building which appears as though it has been built almost to the maximum of what the lot would permit. The prior building had a relatively flat roof as contrasted to the tile roof of the new building which is most noticeable about the one story elements of the existing building. The prior building was relatively low key and did not stick out.

If you disagree with me about these facts, please advise me as soon as possible so that we can resolve any misunderstandings and move forward with the same facts.

In the interest of clarity, I will list some the violations with numbers:

1. THE NEW TWO STORY BUILDING ALTERED THE BASIC, EXTERIOR CHARACTERISTICS OR APPEARANCE OF THE BUILDING OR STRUCTURE OF THE PRIOR BUILDING IN A MAJOR WAY.
2. THE NEW TWO STORY BUILDING ALTERED AND INCREASED THE PITCH OF THE ROOF ABOVE THE ENCROACHING ON STORY ELEMENTS OF THE PRIOR BUILDING.
3. THE NEW BUILDING IS A TWO STORY BUILDING, WITH A PORTION OF IT BEING ONLY ONE STORY.
4. PORTIONS OF THE ONE STORY ELEMENTS OF THE BUILDING APPEAR TO EXCEED 15 FEET IN HEIGHT WHICH WOULD REQUIRE A SETBACK OF 20 FEET FOR A ONE STORY BUILDING.

CONCLUSION

I request that the City take appropriate steps to remove this violation by having the encroaching portions removed, especially in light of the fact that the encroaching portions were designed for easy removal. The property owner took his chances with the illegal structure in a very prominent place. Moreover, there is a disclaimer on the plans which states that a City of approval of the plans does not sanction a zoning violation. (I think that I wrote a version of that disclaimer which merely restates a fundamental legal principle.)

After the building is reconstructed to comply with the zoning, it might be appropriate to seek a condominium conversion. But that would be at a later date.

I would also like to know why this illegal apartment/office project has been on the desk of one of your planner's for approximately 10 months without a summary rejection.

I apologize for any typos but I wanted to get the gist to you ASAP so that there are not any more illegal approvals, especially in obvious places.

This e-mail may contain confidential or privileged information for the sole use of the intended recipient. Any review or distribution by others is strictly prohibited. If you are not the intended recipient, please contact the sender and delete this e-mail.

Jim

James O. Kahan
3709 Dixon Street (formerly Magnolia Lane)
Santa Barbara, California 93105-2419
E-mail - jok@kahansb.com
Telephone - 805-682-2972
Fax - 805-682-8914

From: Kato, Danny [<mailto:DKATO@SantaBarbaraCA.gov>]

Sent: Friday, March 10, 2006 1:38 PM

To: jok@kahansb.com

Cc: Weiss, Bettie; Casey, Paul; Armstrong, Jim; Dayton, Rob; Allen, Browning; Nisich, Tony; Vincent, Scott; Morando, Mark; Salinas, Marisela; Kennedy, Kathleen

Subject: Century 21 and Parking Requirement for Fast Food Restaurants

Mr. Kahan

Exh 1 page 4 of 6

7/31/2006

This email is in response to your email to Paul Casey, below, and will discuss the Century 21 building and our parking requirement for fast food restaurants.

CENTURY 21 BUILDING

The zoning for this property is C-2/SD-2. The C-2 Zone does not have setbacks for commercial or mixed use buildings. The SD-2 zone has a 10 foot setback for 1 story buildings, and a 20 foot setback for 2 story buildings. The existing building was nonconforming as to the SD-2 setback, as it was a single story building that was built about 3 feet from the front property line. The plan shows the front portion of the ground floor of the building to remain, with the addition of the second story.

The Zoning Ordinance allows the demolition and reconstruction of existing, nonconforming buildings (e.g. buildings that encroach into setbacks) and the addition of conforming additions (see SBMC Section 28.87.030.D.(5) and (6)) without Modifications. The portion of the building that encroaches into the front setback was rebuilt as allowed by the Zoning Ordinance, and the remaining portions of the building conform to the requirements of the C-2 and SD-2 Zones. Therefore, the project conforms to the Zoning Ordinance.

PARKING REQUIREMENT FOR FAST FOOD RESTAURANTS

The City has determined that cafés like Starbucks or Coffee Bean are the equivalent of fast food restaurants, for parking purposes. The City's administrative practice in Staff's interpretation of the Zoning Ordinance since at least 1990 (when I started working here), has been that fast food restaurants must provide parking at a ratio of 1 space per 100 square feet of customer accessible area, and 1 space per 250 square feet of employee area. We believe this parking requirement to be adequate, as the high demand users are the customers, whereas the parking demand of the employee area is equivalent to any other retail, commercial or office space. This interpretation has been (and continues to be) applied to fast food restaurants all over the City, except in areas that have an overriding parking requirement, like the Central Business District (all uses based on 1 space per 500 square feet of floor area). Seating is not used to calculate parking for fast food restaurants or cafés.

For the Coffee Bean and Tea Leaf at State and De la Vina Streets, we measured the customer service area at 900 s.f. (9 parking spaces required), and the employee area at 800 s.f. (3.2 parking spaces, which rounds down to 3 parking spaces required) for a total parking requirement of 12 parking spaces. The project provided 12 parking spaces; therefore, it was approved.

It seems that this Coffee Bean establishment is very successful, and draws many customers. The City does not (probably cannot) require additional parking for successful businesses. A not-so-successful café (e.g. Bob's Coffee House - Home of Folgers Instant and General Mills International Coffees) would have the same parking requirement of 12 spaces.

Thank you for your interest.

Danny Kato
Zoning & Enforcement Supervisor

From: James O. Kahan [mailto:jok@kahansb.com]

Sent: Friday, February 24, 2006 4:53 PM

To: Casey, Paul

Cc: Kennedy, Kathleen; Dayton, Rob; Weiss, Bettie; Allen, Browning; Tony Nisich; Armstrong, Jim

Subject: Outer State - Code violations and parking problems.

Paul

This letter will confirm our earlier conversation and fill in some of the details. You are aware that I am very interested in what occurs in Upper State and I have done a significant amount of research. We are all aware of the parking and circulation problems related to Trader Joe's/Surgical Center, 3905 State Street (Peet's Coffee, UPS, Sushi Teri) and the Coffee Bean and Tea Leaf at the intersection of State and De La Vina.

The first project that I mentioned to you today was the addition of four apartments to the Century 21 real estate building at 3408-12 State Street. This project does not comply with the required setback of 20 feet for a two story building in the S-D-2 zone. I anticipate that somebody might argue that the work is a legally permitted expansion for a nonconforming structure. However, the Municipal Code does not authorize such expansions. I refer you to S.B.M.C. § 28.87.030.D. For your convenience, I have attached a copy of Section 28.87.030. Moreover the first story appears to have less than the minimum setback of 10 feet in the S-D-2 zone. There is no record that this project ever

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received any type of modification. The only planning approval (other than ABR) that I have found is a red stamped image giving approval for planning that is stamped on the cover sheet of the plans and is initialed by somebody in your department. It is my understanding that there is now an application to convert these apartments to condominiums and Kathleen Kennedy is the planner for that project. PLEASE EXPLAIN TO ME HOW A PROJECT WAS APPROVED BY YOUR DEPARTMENT WHEN IT VIOLATED THE ZONING.

The second project we discussed was the Coffee Bean and Tea Leaf at the intersection of State Street and De La Vina. I calculated the square footage of the building as approximately 1,600 square feet but the plans list the floor area in excess of 1,700 square feet which means that the Municipal Code would require 16 or 17 parking spaces pursuant to S.B.M.C. § 28.90.100.J.4 (one parking space for every 100 square feet of floor area). I was told your Department only applies the requirement of 1 space per 100 square feet to the public area, but I see no such authorization in the Municipal Code. PLEASE EXPLAIN THIS TO ME.

Even if you applied the theory that your department uses to reduce the parking requirements, it failed to recognize the seating that was shown on the plans (40 seats for indoor seating and 20 seats for outdoor seating for a total of 60 seats, but the actual exterior seating is much more than is listed in the plans.) I view almost every fast food restaurant as a subcategory of a restaurant. In other words, almost every fast food restaurant is a restaurant, but not every restaurant is a fast food restaurant. Moreover, the parking requirements for fast food restaurants are usually greater than would be required for general restaurants. (The parking requirement for restaurants is the greater of 4 spaces for every 1,000 square feet or one space for every three seats.) If you calculated the parking requirements for the Coffee Bean based upon seating, the requirement would be 20 parking spaces for the 60 seats shown on the plan and many more for the actual number of seats and tables that exist. PLEASE EXPLAIN TO ME WHAT WENT WRONG WITH THE CALCULATIONS FOR THIS SITE. If the parking deficiency only affected the business involved it would not be so bad, but neighboring properties bear the brunt of the overflow and we have seen how neighborhood streets are used to park automobiles that should be parked on site. BY A COPY OF THIS E-MAIL, I AM REQUESTING THAT ROB DAYTON CONFIRM THAT THE ROOM (TURNING RADIUS) IS ADEQUATE ON THAT SITE FOR PARKING WHEN VEHICLES ARE BACKING UP TO EXIT FROM PARKING SPACES. The space seemed a little tight when I watched a few vehicles whose drivers were struggling as they were trying to exit.

I assume that you also will have somebody in your department follow up on the parking problems and code violations in reference to 3901-17 State Street which I brought to your attention in my e-mail which I sent to you on February 14.

Jim

James O. Kahan
3709 Dixon Street (formerly Magnolia Lane)
Santa Barbara, California 93105-2419
E-mail - jok@kahansb.com
Telephone - 805-682-2972
Fax - 805-682-8914

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James O. Kahan

From: Kato, Danny [DKATO@SantaBarbaraCA.gov]
Sent: Tuesday, April 11, 2006 3:54 PM
To: Kato, Danny; James O. Kahan; Weiss, Bettie; Armstrong, Jim; McMillion, Deana
Cc: Casey, Paul; Wiley, Stephen; Hubbell, Jan; Morando, Mark; Salinas, Marisela; Nisich, Tony; Allen, Browning; Dayton, Rob; Barnwell, Brian B.; Williams, Das; House, Grant; Grant House; Schneider, Helene; Falcone, Iya; Blum, Marty; Horton, Roger; Addison Thompson; Bendy White; Charmaine Jacobs; George Myers; John Jostes; Stella Larson; William Mahan; Kennedy, Kathleen
Subject: RE: 3412 State Street #2

Mr. Kahan

I misread the City Attorney's direction regarding the enforcement of these encroachments, and therefore wrote you incorrectly below.

If the applicant does not pursue any discretionary approvals, the City will not enforce on these encroachments, as they have approved building permits. If the applicant pursues any discretionary approvals, Planning Staff will process the as-built Modifications or work with the applicant to redesign the project.

I apologize for the misinformation in my last email.

Danny Kato
Zoning & Enforcement Supervisor

From: Kato, Danny
Sent: Tuesday, April 11, 2006 3:47 PM
To: 'James O. Kahan'; Weiss, Bettie; Armstrong, Jim; McMillion, Deana
Cc: Casey, Paul; Wiley, Stephen; Hubbell, Jan; Morando, Mark; Salinas, Marisela; Nisich, Tony; Allen, Browning; Dayton, Rob; Barnwell, Brian B.; Williams, Das; House, Grant; 'Grant House'; Schneider, Helene; Falcone, Iya; Blum, Marty; Horton, Roger; 'Addison Thompson'; 'Bendy White'; 'Charmaine Jacobs'; 'George Myers'; 'John Jostes'; 'Stella Larson'; 'William Mahan'
Subject: RE: 3412 State Street (Century 21) - Zoning Irregularities - Upper State FW: 3412 State Street (Century 21) RE: Century 21 and Parking Requirement for Fast Food Restaurants

Mr. Kahan

Planning Staff have reviewed your earlier emails and the approved plans, and has conducted a site visit to the property. Our previous conclusion that the Century 21 building conforms to zoning was incorrect. A minor portion of the building that encroaches into the front yard setback, and the plans should have been revised or a Modification approved prior to building permit issuance.

The walls of the reconstructed portion of the building are in the same location, which is consistent with the intent of the ZO provision re: demo and reconstruction of nonconforming buildings. Additionally, the building is shorter than the previously existing building, because the roof pitch is shallower. This would have also been consistent with the intent of the ZO provisions, except that other improvements were done at the same time. The roof, though shallower in pitch and height, is greater in extent, i.e. the roof area is larger than the previous roof area. This is because the previous roof did not have any overhangs, and the new roof does. These new overhangs are further encroachments into the required yard, and should have required a Modification. The new pillars that appear to hold up the roof (they may be decorative, rather than structural) also encroach into the front setback.

Based on direction from the City Attorney's Office, Planning Staff will allow the applicant to apply for as-built Modifications as part of the Condominium Conversion process, rather than requiring that the improvements be removed. If the Condominium Conversion process is withdrawn, Zoning Enforcement Staff will require application and follow-through with as-built for the improvements that were built without Modifications.

To respond to your list of 4 possible violations:

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1. THE NEW TWO STORY BUILDING ALTERED THE BASIC, EXTERIOR CHARACTERISTICS OR APPEARANCE OF THE BUILDING OR STRUCTURE OF THE PRIOR BUILDING IN A MAJOR WAY. Violation. The changes exceeded those allowed by the Zoning Ordinance.

2. THE NEW TWO STORY BUILDING ALTERED AND INCREASED THE PITCH OF THE ROOF ABOVE THE ENCROACHING ON STORY ELEMENTS OF THE PRIOR BUILDING. Incorrect. The previous building was 19.5 feet tall, with a roof pitch of 12/12. The new building is 16.5 feet in height with a 4/12 roof pitch. The reconstructed building is shorter than the previously existing building.

3. THE NEW BUILDING IS A TWO STORY BUILDING, WITH A PORTION OF IT BEING ONLY ONE STORY. I'll discuss #3 and #4 below.

4. PORTIONS OF THE ONE STORY ELEMENTS OF THE BUILDING APPEAR TO EXCEED 15 FEET IN HEIGHT WHICH WOULD REQUIRE A SETBACK OF 20 FEET FOR A ONE STORY BUILDING. I believe that both #3 and #4 are attempts to show that the reconstructed portion of the building illegally encroaches into the required front yard setback. This is true for those portions of the building described above, but not for the main building outline and roof. Here's how we got to this conclusion:

As described in #2 above, the original building was 19.5 feet tall, with a roof pitch of 12/12. Therefore, the original building was nonconforming to the 20 foot front yard setback for single story buildings that are greater than 15 feet tall. The new building is 16.5 feet tall, with a roof pitch of 4/12. SBMC Section 28.87.030.D.1.b.(2) allows replacement of roofing materials, except those that require an increase in roof pitch. Replacement of roofing materials that decrease the roof pitch and/or height are allowed by right. The reconstruction was for the same building footprint with a lower roof and roof pitch, which is allowed by right (combination of SBMC Section 28.87.030.D.1.a.(5) and 28.87.030.D.1.b.). The expansion of the roof and the addition of the columns went beyond what's allowable by right; therefore, as-built Modifications will be required as the project moves forward with the Condominium Conversion.

To summarize: Planning Staff erred in approving the project without Modifications for the roof overhang encroachment and the support post encroachments. Planning Staff will require the applicant include applications for as-built Modifications for these improvements in the Condominium Conversion project. If that project is withdrawn, Zoning Enforcement Staff will require that the project applicants apply for the as-built Modifications. This concludes Staff's investigations into the Century 21 building.

To answer your questions to Bettie (in the email directly below)

1. The Outer State Street study item is currently scheduled for April 25. At this time, there is no time certain. Please contact John Ledbetter, Principal Planner (jledbetter@santabarbaraca.gov) or Liz Limon, Project Planner (elimon@santabarbaraca.gov) at 564-5470 for more information.

2. We have provided a response to your emails here.

3. Work projects must be taken in order of priority.

4. All remaining issues with Century 21 have been discussed in this email.

Thank you for your concern.

Danny Kato
Zoning & Enforcement Supervisor
(805) 564-5470

From: James O. Kahan [mailto:jok@kahansb.com]

Sent: Tuesday, April 11, 2006 1:52 PM

To: Weiss, Bettie; Armstrong, Jim; McMillion, Deana

Cc: Casey, Paul; Wiley, Stephen; Hubbell, Jan; Kato, Danny; Morando, Mark; Salinas, Marisela; Nisich, Tony; Allen, Browning; Dayton, Rob; Barnwell, Brian B.; Williams, Das; House, Grant; 'Grant House'; Schneider, Helene; Falcone, Iya; Blum, Marty; Horton, Roger; 'Addison Thompson'; 'Bendy White'; 'Charmaine Jacobs'; 'George Myers'; 'John Jostes'; 'Stella Larson'; 'William Mahan'

Subject: RE: 3412 State Street (Century 21) - Zoning Irregularities - Upper State FW: 3412 State Street (Century 21) RE: Century 21 and Parking Requirement for Fast Food Restaurants

Bettie

Thanks for your prompt reply. I appreciate the notices that I receive from your Department, but I wanted to make certain that I have requested all of them for the S-D-2 zone.

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First, in your e-mail, you stated that the City Council would be holding a meeting on "January 25 to discuss their earlier direction to look at a study of Upper State Street." I guessed that you meant April 25? Is there a time certain? Who is preparing the CAR or staff report?

Second, I do not believe that your Department's e-mails were correct in relation to Danny Kato's March 10 e-mail. I spent a significant amount of time analyzing the law because his e-mail was so incorrect. And I took even more time to specifically set forth my analysis. If I am wrong in any way, I would appreciate a thoughtful response with specifics.

Third, I am one person and I do not understand why it takes so long for your Department to respond especially since the issues are relatively simple and the City has massive resources.

Finally, what do you view as the remaining issue on Century 21? I thought that there was more than one issue. When can I expect a reply from Danny and you?

Jim

James O. Kahan
3709 Dixon Street (formerly Magnolia Lane)
Santa Barbara, California 93105-2419
E-mail - jok@kahansb.com
Telephone - 805-682-2972
Fax - 805-682-8914

From: Weiss, Bettie [mailto:bweiss@SantaBarbaraCA.gov]

Sent: Monday, April 10, 2006 4:48 PM

To: James O. Kahan; Armstrong, Jim; McMillion, Deana

Cc: Casey, Paul; Wiley, Stephen; Hubbell, Jan; Kato, Danny; Morando, Mark; Salinas, Marisela; Nisich, Tony; Allen, Browning; Dayton, Rob; Barnwell, Brian B.; Williams, Das; House, Grant; Grant House; Schneider, Helene; Falcone, Iya; Blum, Marty; Horton, Roger; Addison Thompson; Bendy White; Charmaine Jacobs; George Myers; John Jostes; Stella Larson; William Mahan

Subject: RE: 3412 State Street (Century 21) - Zoning Irregularities - Upper State FW: 3412 State Street (Century 21) RE: Century 21 and Parking Requirement for Fast Food Restaurants

Hi Jim, Jim, Deana, Mayor & Council, PC, and everyone:

First, on the notice for any hearing related to property within the SD-2. Deana and our administrative staff currently include the Allied Neighborhood Association and related neighborhood groups (Grove Lane, Foothill, etc) notice of projects in the neighborhoods. We maintain these lists based on current info provided by neighborhood groups. I believe we have already responded to this request, but I am asking Deana to double check as to your notification request.

Please be advised that the City Council will hold a meeting on January 25 to discuss their earlier direction to look at a study of Upper State Street. The City Clerk will not be sending a mailed notice for this discussion but we want to be sure that you know about it.

Second, please do not assume that we have no need to respond to your emails because we believe they are correct. We have a number of staff to consult on these matters including the City Administrator, City Attorney and various Land Development Team staff, and new important requests for information come up daily at the City. Further because we have already looked into these issues, we may have little additional input for you.

Century 21 - I am aware that a front yard encroachment determination for Century 21 will be forth coming, and that may be new information. On other matters, I believe our earlier responses will for the most part

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stand as we communicated before.

Parking concerns - I have seen a couple of emails to you from Rob Dayton, but I am not certain if more info is forthcoming on that issue.

Thank you for your patience , Danny & I will get back to you soon about the remaining issue of Century 21.

Thank you,
Bettie
Bettie Weiss, City Planner
Community Development Dept.
City of Santa Barbara
(805) 564-5470

From: James O. Kahan [mailto:jok@kahansb.com]

Sent: Monday, April 10, 2006 4:17 PM

To: Armstrong, Jim

Cc: Casey, Paul; Wiley, Stephen; Weiss, Bettie; Hubbell, Jan; Kato, Danny; Morando, Mark; Salinas, Marisela; Nisich, Tony; Allen, Browning; Dayton, Rob; Barnwell, Brian B.; Williams, Das; House, Grant; Grant House; Schneider, Helene; Falcone, Iya; Blum, Marty; Horton, Roger; Addison Thompson; 'Bendy White'; 'Charmaine Jacobs'; 'George Myers'; 'John Jostes'; 'Stella Larson'; 'William Mahan'

Subject: 3412 State Street (Century 21) - Zoning Irregularities - Upper State FW: 3412 State Street (Century 21) RE: Century 21 and Parking Requirement for Fast Food Restaurants

Importance: High

Mr. Armstrong

I am writing to you because I have not received a response to my e-mail (see below) to Paul Casey with copies to Bettie Weiss, Kathleen Kennedy, Danny Kato, Marisela Salinas, Mark Morando, Tony Nisich, Browning Allen, Rob Dayton, Steve Wiley and you, dated March 20. I initially sent my Complaint to Paul Casey on February 24, but I received an unacceptable answer for reasons set forth in my e-mail, dated March 20. I assume that my March 20 legal analysis was correct because I have not received any response from the City for more than three weeks.

As part of my research to prepare for the appeal of the State Street Lofts project, I did a massive amount of research relating to Upper State, especially concerning problem properties. I also took hundreds of pictures of the good things in Upper State, problem properties and other happenings in Upper State. As part of the appeal, I submitted a CD-R disc which contained hundreds of these pictures.

I advised your staff of some of the most glaring problems with separate e-mails that discussed specific problems. I am requesting that the City answer my complaints/inquiries about the referenced property and advise me as to its course of action for this violation of the S-D-2 zoning.

I AM ALSO REQUESTING THAT YOU SEND ME NOTICES OF ANY LAND USE ACTION (modifications, variances, subdivision maps, condominium conversions, CUPs, PUDs, etc.) THAT THE CITY INTENDS TO TAKE IN THE S-D-2 OVERLAY ZONE. I am make this request in my capacity as president of Allied Neighborhoods Association, chairperson of the Grove Lane Area Neighborhood Association (GLANA) and as a private individual.

Thank you in advance for your prompt attention to my requests.

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7/31/2006

James O. Kahan
3709 Dixon Street (formerly Magnolia Lane)
Santa Barbara, California 93105-2419
E-mail - jok@kahansb.com
Telephone - 805-682-2972
Fax - 805-682-8914

From: James O. Kahan [mailto:jok@kahansb.com]

Sent: Monday, March 20, 2006 9:30 AM

To: 'Kato, Danny'

Cc: 'Weiss, Bettie'; 'Casey, Paul'; 'Armstrong, Jim'; 'Dayton, Rob'; 'Allen, Browning'; 'Nisich, Tony'; 'Vincent, Scott'; 'Morando, Mark'; 'Salinas, Marisela'; 'Kennedy, Kathleen'; Steve Wiley (swiley@ci.santa-barbara.ca.us)

Subject: 3412 State Street (Century 21) RE: Century 21 and Parking Requirement for Fast Food Restaurants

Importance: High

Mr. Casey:

Danny Kato sent me an e-mail on behalf of your Department which attempted to respond to an e-mail that I sent to you which made complaints about two properties. His e-mail misstated Santa Barbara's zoning law and misapplied it to the facts of two existing situations. I have the feeling that he was attempting to justify obvious legal mistakes by your Department.

For your better understanding of how the Century 21 building so conflicts with a vision of a better State Street without adequate setbacks, I have attached six pictures of the Century 21 building to highlight the points made in this complaint and explanation. (I will send them separately.) The Century 21 building really messes up the opportunity we now have for Upper State. Benny White gave the best analogy when he said that we now have a blank canvas on Upper State, we can paint something beautiful on it and we should not squander this opportunity. And the existing Century 21 building is a step towards destroying that opportunity. The City might not be able to do any thing about the inadequate setbacks for the Fidelity Building and the connected three story condominium building (especially along Hope Avenue), but the Century 21 building is something upon which the City can take decisive action.

This e-mail will focus on the Century 21 (3412 State Street) because an application is now pending for a condominium conversion and this illegal approval has been and will be used as a precedent for encroaching construction along Upper State Street. Based upon what was said at last week's joint meeting of the City Council and Planning Commission, I do not believe that this project should be considered by the Staff Hearing Officer. It should be brought out into the daylight at public hearing before the Planning Commission.

The Century 21 building looks better than its predecessor, but it is an illegal in-your-face encroachment into the minimum front yard setback for State Street. It undoes the last 27 years of planning to achieve setbacks along State Street pursuant to the S-D-2 zoning that was adopted in 1979. It will limit future planning for wide open spaces along Upper State Street and will establish a bad precedent. It was cited by the developer of the State Street Lofts project as a precedent for Upper State Street to the extent that its presentation even showed a picture of the Century 21 building. Fortunately, the second story elements of the Century 21 building are set back approximately 24.5 feet from the front property line (from the edge of the sidewalk), but a survey will be needed to determine the actual setback. The encroaching 20 feet of the first story can easily be removed and severed which would allow the remaining first story elements of 4.5 feet to be blended attractively into the two story portions of the building. Good design will prevent it from looking like an amputation. It is my guess that the architect knew what he was doing and was willing to take the chance because he designed the encroaching first story elements for easy removal.

In my February 24, 2006 e-mail to you, I referred you to S.B.M.C. Section 28.87.030.D and even attached a copy for your convenience. Mr. Kato's e-mail response referred to S.B.M.C. Section 28.87.030.D, but he did not adequately analyze it. Here merely gave conclusions. In light of that response, I will start with analyzing the law.

APPLICABLE LAW

The front yard setbacks for the S-D-2 zone are established in S.B.M.C. Section 28.45.008.D.4 which states:

"D. STANDARDS. The following standards shall apply to all projects in the S-D-2 Zone:

4. Front Yard Setbacks. There shall be a front yard of not less than ten (10) feet for one story buildings not exceeding fifteen (15) feet in height and not less than twenty (20) feet for two and three story buildings not exceeding forty-five (45) feet in height."

The law applicable to nonconforming buildings is set forth in S.B.M.C. Section 28.87.030.D which states in relevant part as follows:

"D. NONCONFORMING BUILDINGS. The following provisions shall apply to all nonconforming buildings and structures or parts thereof legally existing at the effective date of this title.

1. Any nonconforming building or structure may be maintained, improved, or altered only as follows:

a. Improvements that do not change the use or the basic, exterior characteristics or appearance of the building or structure are allowed. Such improvements include but are not limited to the following:

(2) The replacement of structural members, such as studs, rafters, joists, beams, or other structural members, except where it will result in an **increase in roof pitch**;

(5) The demolition and replacement of the nonconforming building or structure, provided that the following conditions are met:

- (a) **The basic, exterior characteristics of the replacement building or structure is not changed**, except as allowed in this Section;
 - (b) **The new structure complies with all applicable height and building story limitations**;
- and

(6) **Additions that conform to the current Zoning standards for the zone.**

b. Minor improvements that change the exterior characteristics are allowed. Such minor improvements are limited to the following:

- (1) The replacement of exterior wall coverings with the same or different materials;
- (2) **The replacement of roofing materials with the same or different materials, except those that require an increase in roof pitch**;
- (3) Reduction in the number or size of window or door openings;
- (4) Replacement of existing windows or doors where there is no increase in opening size, or changes in the location of the windows or doors."

The zoning laws generally have provisions to allow the repair, maintenance and continuance of nonconforming buildings and other structures. However, these laws do not generally allow expansion of those structures. The Santa Barbara Zoning Ordinance is in accord with those general principles.

If you disagree with me about these concepts and principles, please advise me as soon as possible so that I can furnish you with authority on these general planning and legal principles.

IMPROPER APPLICATION OF FACTS TO THE LAW

The prior building that housed Century 21 was a relatively low key one story structure. (pictures of the prior building should be shown on the plans for the new two story building or should be in your Department's ABR files which I never saw as part of my Public Records request). The prior building was relatively small in scale in contrast to its two story replacement building which appears as though it has been built almost to the maximum of what the lot would permit. The prior building had a relatively flat roof as contrasted to the tile roof of the new building which is most noticeable about the one story elements of the existing building. The prior building was relatively low key and did not stick out.

If you disagree with me about these facts, please advise me as soon as possible so that we can resolve any misunderstandings and move forward with the same facts.

In the interest of clarity, I will list some the violations with numbers:

1. THE NEW TWO STORY BUILDING ALTERED THE BASIC, EXTERIOR CHARACTERISTICS OR APPEARANCE OF THE BUILDING OR STRUCTURE OF THE PRIOR BUILDING IN A MAJOR WAY.
2. THE NEW TWO STORY BUILDING ALTERED AND INCREASED THE PITCH OF THE ROOF ABOVE THE ENCROACHING ON STORY ELEMENTS OF THE PRIOR BUILDING.
3. THE NEW BUILDING IS A TWO STORY BUILDING, WITH A PORTION OF IT BEING ONLY ONE STORY.
4. PORTIONS OF THE ONE STORY ELEMENTS OF THE BUILDING APPEAR TO EXCEED 15 FEET IN HEIGHT WHICH WOULD REQUIRE A SETBACK OF 20 FEET FOR A ONE STORY BUILDING.

CONCLUSION

I request that the City take appropriate steps to remove this violation by having the encroaching portions removed, especially in light of the fact that the encroaching portions were designed for easy removal. The property owner took his chances with the illegal structure in a very prominent place. Moreover, there is a disclaimer on the plans which states that a City of approval of the plans does not sanction a zoning violation. (I think that I wrote a version of that disclaimer which merely restates a fundamental legal principle.)

After the building is reconstructed to comply with the zoning, it might be appropriate to seek a condominium conversion. But that would be at a later date.

I would also like to know why this illegal apartment/office project has been on the desk of one of your planner's for approximately 10 months without a summary rejection.

I apologize for any typos but I wanted to get the gist to you ASAP so that there are not any more illegal approvals, especially in obvious places.

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7/31/2006

This e-mail may contain confidential or privileged information for the sole use of the intended recipient. Any review or distribution by others is strictly prohibited. If you are not the intended recipient, please contact the sender and delete this e-mail.

Jim

James O. Kahan
3709 Dixon Street (formerly Magnolia Lane)
Santa Barbara, California 93105-2419
E-mail - jok@kahansb.com
Telephone - 805-682-2972
Fax - 805-682-8914

From: Kato, Danny [mailto:DKATO@SantaBarbaraCA.gov]

Sent: Friday, March 10, 2006 1:38 PM

To: jok@kahansb.com

Cc: Weiss, Bettie; Casey, Paul; Armstrong, Jim; Dayton, Rob; Allen, Browning; Nisich, Tony; Vincent, Scott; Morando, Mark; Salinas, Marisela; Kennedy, Kathleen

Subject: Century 21 and Parking Requirement for Fast Food Restaurants

Mr. Kahan

This email is in response to your email to Paul Casey, below, and will discuss the Century 21 building and our parking requirement for fast food restaurants.

CENTURY 21 BUILDING

The zoning for this property is C-2/SD-2. The C-2 Zone does not have setbacks for commercial or mixed use buildings. The SD-2 zone has a 10 foot setback for 1 story buildings, and a 20 foot setback for 2 story buildings. The existing building was nonconforming as to the SD-2 setback, as it was a single story building that was built about 3 feet from the front property line. The plan shows the front portion of the ground floor of the building to remain, with the addition of the second story.

The Zoning Ordinance allows the demolition and reconstruction of existing, nonconforming buildings (e.g. buildings that encroach into setbacks) and the addition of conforming additions (see SBMC Section 28.87.030.D.(5) and (6)) without Modifications. The portion of the building that encroaches into the front setback was rebuilt as allowed by the Zoning Ordinance, and the remaining portions of the building conform to the requirements of the C-2 and SD-2 Zones. Therefore, the project conforms to the Zoning Ordinance.

PARKING REQUIREMENT FOR FAST FOOD RESTAURANTS

The City has determined that cafés like Starbucks or Coffee Bean are the equivalent of fast food restaurants, for parking purposes. The City's administrative practice in Staff's interpretation of the Zoning Ordinance since at least 1990 (when I started working here), has been that fast food restaurants must provide parking at a ration of 1 space per 100 square feet of customer accessible area, and 1 space per 250 square feet of employee area. We believe this parking requirement to be adequate, as the high demand users are the customers, whereas the parking demand of the employee area is equivalent to any other retail, commercial or office space. This interpretation has been (and continues to be) applied to fast food restaurants all over the City, except in areas that have an overriding parking requirement, like the Central Business District (all uses based on 1 space per 500 square feet of floor area). Seating is not used to calculate parking for fast food restaurants or cafés.

For the Coffee Bean and Tea Leaf at State and De la Vina Streets, we measured the customer service area at 900 s.f. (9 parking spaces required), and the employee area at 800 s.f. (3.2 parking spaces, which rounds down to 3 parking spaces required) for a total parking requirement of 12 parking spaces. The project provided 12 parking spaces; therefore, it was approved.

It seems that this Coffee Bean establishment is very successful, and draws many customers. The City does not (probably cannot) require additional parking for successful businesses. A not-so-successful café (e.g. Bob's Coffee House - Home of Folgers Instant and General Mills International Coffees) would have the same parking requirement of 12 spaces.

Thank you for your interest.

Exh E page 7 of 9

7/31/2006

Danny Kato
Zoning & Enforcement Supervisor

From: James O. Kahan [mailto:jok@kahansb.com]
Sent: Friday, February 24, 2006 4:53 PM
To: Casey, Paul
Cc: Kennedy, Kathleen; Dayton, Rob; Weiss, Bettie; Allen, Browning; Tony Nisich; Armstrong, Jim
Subject: Outer State - Code violations and parking problems.

Paul

This letter will confirm our earlier conversation and fill in some of the details. You are aware that I am very interested in what occurs in Upper State and I have done a significant amount of research. We are all aware of the parking and circulation problems related to Trader Joe's/Surgical Center, 3905 State Street (Peet's Coffee, UPS, Sushi Teri) and the Coffee Bean and Tea Leaf at the intersection of State and De La Vina.

The first project that I mentioned to you today was the addition of four apartments to the Century 21 real estate building at 3408-12 State Street. This project does not comply with the required setback of 20 feet for a two story building in the S-D-2 zone. I anticipate that somebody might argue that the work is a legally permitted expansion for a nonconforming structure. However, the Municipal Code does not authorize such expansions. I refer you to S.B.M.C. § 28.87.030.D. For your convenience, I have attached a copy of Section 28.87.030. Moreover the first story appears to have less than the minimum setback of 10 feet in the S-D-2 zone. There is no record that this project ever received any type of modification. The only planning approval (other than ABR) that I have found is a red stamped image giving approval for planning that is stamped on the cover sheet of the plans and is initialed by somebody in your department. It is my understanding that there is now an application to convert these apartments to condominiums and Kathleen Kennedy is the planner for that project. PLEASE EXPLAIN TO ME HOW A PROJECT WAS APPROVED BY YOUR DEPARTMENT WHEN IT VIOLATED THE ZONING.

The second project we discussed was the Coffee Bean and Tea Leaf at the intersection of State Street and De La Vina. I calculated the square footage of the building as approximately 1,600 square feet but the plans list the floor area in excess of 1,700 square feet which means that the Municipal Code would require 16 or 17 parking spaces pursuant to S.B.M.C. § 28.90.100.J.4 (one parking space for every 100 square feet of floor area). I was told your Department only applies the requirement of 1 space per 100 square feet to the public area, but I see no such authorization in the Municipal Code. PLEASE EXPLAIN THIS TO ME.

Even if you applied the theory that your department uses to reduce the parking requirements, it failed to recognize the seating that was shown on the plans (40 seats for indoor seating and 20 seats for outdoor seating for a total of 60 seats, but the actual exterior seating is much more than is listed in the plans.) I view almost every fast food restaurant as a subcategory of a restaurant. In other words, almost every fast food restaurant is a restaurant, but not every restaurant is a fast food restaurant. Moreover, the parking requirements for fast food restaurants are usually greater than would be required for general restaurants. (The parking requirement for restaurants is the greater of 4 spaces for every 1,000 square feet or one space for every three seats.) If you calculated the parking requirements for the Coffee Bean based upon seating, the requirement would be 20 parking spaces for the 60 seats shown on the plan and many more for the actual number of seats and tables that exist. PLEASE EXPLAIN TO ME WHAT WENT WRONG WITH THE CALCULATIONS FOR THIS SITE. If the parking deficiency only affected the business involved it would not be so bad, but neighboring properties bear the brunt of the overflow and we have seen how neighborhood streets are used to park automobiles that should be parked on site. BY A COPY OF THIS E-MAIL, I AM REQUESTING THAT ROB DAYTON CONFIRM THAT THE ROOM (TURNING RADIUS) IS ADEQUATE ON THAT SITE FOR PARKING WHEN VEHICLES ARE BACKING UP TO EXIT FROM PARKING SPACES. The space seemed a little tight when I watched a few vehicles whose drivers were struggling as they were trying to exit.

I assume that you also will have somebody in your department follow up on the parking problems and code violations in reference to 3901-17 State Street which I brought to your attention in my e-mail which I sent to you on

7/31/2006

Exh E page 8 of 2

February 14.

Jim

James O. Kahan

3709 Dixon Street (formerly Magnolia Lane)

Santa Barbara, California 93105-2419

E-mail - jok@kahansb.com

Telephone - 805-682-2972

Fax - 805-682-8914

August 18, 2006

City of Santa Barbara Planning Commission
Kathleen Kennedy, Associate Planner
630 Garden Street
Santa Barbara, CA 93101

RECEIVED

AUG 19 2006

RE: 3408 3412 STATE STREET
MST#2004-00704

CITY OF SANTA BARBARA
PLANNING DIVISION

APPEAL OF STAFF HEARING OFFICER APPROVAL

After returning from vacation recently, I reviewed the letter dated July 31, 2006 from James O. Kahan, titled Notice of Appeal. I am writing to state my belief that the letter does not qualify as an appeal as outlined in SBMC 28.05.020 B, and should, therefore, be rejected outright.

The appeal provisions listed in the Municipal Code clearly state that appeals must be filed within ten (10) calendar days of the date of the Staff Hearing Officer's decision. The project was heard by the Staff Hearing Officer on July 19, 2006. The ten calendar day appeal period ended on July 29. Both the date on the letter and the date of the Planning Division stamp indicate the letter was received on July 31, which is 12 calendar days after the decision. For this reason the letter should not have been accepted, and the appeal should be disqualified.

I am aware there has been a practice of accepting appeals on a Monday if the appeal period expires on a weekend day. I do not know the justification for this practice, but in the case of a very old ordinance, changes in practice happen over time that may not be reflected in the Code. However, the Code in question was adopted in 2006. If it had been the intent of the decision makers to extend the appeal period for this, or any, reason, there was ample opportunity to include this into the new Code. It was obviously excluded from the recently adopted language, and it should not be inserted after the fact.

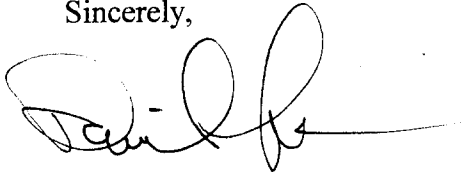
The letter also does not meet other standards of the appeal provisions. Most particularly, the letter does not state specifically how the decision of the Staff Hearing Officer is not in accord with the Zoning Code. There is some claim of actions beyond the scope of authority of the Staff Hearing Officer, but there is no explanation or supporting evidence for this claim.

Worse, is some promise to submit a written amplification of the appeal letter at some unspecified date in the future. I am curious to find out if any additional information been submitted within the intervening 3 weeks. It is clear that the appeal provisions state the specifics of the appeal are to be submitted at the time the appeal is filed. They are the essence of the appeal, and in their absence, there is no appeal.

The lack of specifics should, in and of itself, be grounds for rejecting any appeal. It should be of no consequence for this appeal, however, in that the appeal did not meet the first test listed in the Zoning Ordinance, that the appeal be filed within 10 calendar days of the date of the decision.

My clients are looking forward to moving on with their project, and ask that you apply the standards of the Zoning Code and reject this appeal.

Sincerely,

A handwritten signature in black ink, appearing to read "David Tabor", with a long horizontal flourish extending to the right.

David Tabor AICP

September 25, 2006

City of Santa Barbara Planning Commission
630 Garden Street
Santa Barbara, CA 93101

RE: 3408 & 3412 STATE STREET
MST#2004-00704
APPEAL OF STAFF HEARING OFFICER APPROVAL

I am writing this letter on behalf of the owners of the subject property, Robert and Deborah Hart, to urge you to reject the appeal filed July 31, 2006 from James O. Kahan. We understand the appeal will be heard by the Planning Commission even though the appeal letter does not meet two key provisions to qualify as an appeal: it was received by the City after the 10-day appeal period had lapsed, and does not specifically state how the decision of the Staff Hearing Officer is not in accord with the Zoning Code. The appeal letter promised additional written amplification at some later date. As of the date of this writing, none has been received. Be that as it may, the following comments and clarifications are being presented to address points that were made in the long list of e-mail transcripts attached to the copy of the appeal letter I received.

CONSISTENCY WITH ZONING CODE

This is the main theme of the comments made by Mr. Kahan in his e-mails with the City. These are addressed by City Staff in their responses to Mr. Kahan, but he does not seem to agree with the City's interpretation of the Zoning Code, and their application of it to this and other projects.

It should be noted that the City's response includes a misunderstanding of the project. It is repeatedly stated that the front portion of the building was demolished and rebuilt in the same location, which would be consistent with the Zoning Code. In fact, the front portion of the building was not demolished, and was continuously occupied during construction of the second story, and while the exterior was refinished. It is correctly noted that when the first story exterior was refinished, the result was a shorter pitched roof with a lower overall height.

This misunderstanding is repeated by Mr. Kahan, who also concludes that the encroaching portion of the building project (the one-story portion) was designed for easy removal, and should be removed. The front portion of the building was existing and was in continuous use as part of the existing real estate business at the property. The lobby, reception area, a meeting room, and two offices (including the owner's) are contained within this space. This long-standing local business could not do without this valuable floor area.

APPROPRIATENESS OF DESIGN

Various statements are made by Mr. Kahan about the project imply that the building is too big, that old one-story building was low key and the new building sticks out too much. We don't agree with the appellant's opinion of the building. The new mixed-use building is a beautiful example of what Santa Barbara style architecture should be.

Of particular importance is the approach taken by the architect was to make the pre-existing building more pedestrian friendly. A number of design elements were employed to do this. The lower height of the existing front portion of the building helps to achieve this, as does the shallower roof pitch. Extending the eaves of the one-story portion to match the new portion of the building provides uniformity to the design making the front portion appear smaller in scale even though it is greater in width. More shade results in greater contrast which helps break the building up visually. A new planter wall provides some green space at the front of the property, and is used by those waiting for the bus in front of the building. The remodeling of the building was well received during discussions with the Architectural Board of Review.

In addition to disagreeing with the appellant's opinions of the design, it is our belief that these issues are not relevant to the issue of condo conversion. The design of the units is perfect for their use as condominiums, and the appellant's desired outcome, the removal of the front portion of the building, will not affect the ownership interests involved. This is another reason the appeal should be denied.

MODIFICATION

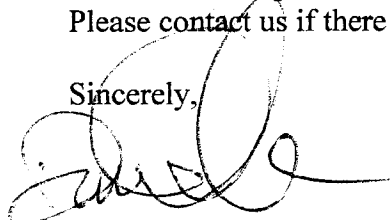
The project received a Modification for a very minor encroachment into the front yard. As noted above, the eaves were extended. To visually support this additional weight, four columns were added, matching columns used on the residential unit balconies. The extension of the eaves and the four columns did not increase the floor area of the building, and helped reduce the building in terms of scale. It was determined by the Hearing Officer that this met the findings for approval of a Modification.

SUMMARY

It is the belief of the owners that the appeal has no merit and should be denied. This project is a good example of a mixed use building that works. With the approval of the Modification for the encroachment of the four columns and roof eaves, the project is consistent with both the Zoning Ordinance and the General Plan. The points made in the appeal do not apply to the issue of the conversion of the building to condominium use.

The owners are proud of their building and are looking forward to making a presentation to you. Please contact us if there are any questions.

Sincerely,

A handwritten signature in black ink, appearing to read 'David Tabor', written over the word 'Sincerely,'.

David Tabor AICP



City of Santa Barbara California

STAFF HEARING OFFICER STAFF REPORT

REPORT DATE: July 12, 2006
AGENDA DATE: July 19, 2006
PROJECT ADDRESS: 3408 and 3412 State Street (MST2004-00704)
TO: Staff Hearing Officer
FROM: Planning Division, (805) 564-5470
 Jan Hubbell, AICP, Senior Planner
 Kathleen Kennedy, Associate Planner *KAK*

I. PROJECT DESCRIPTION

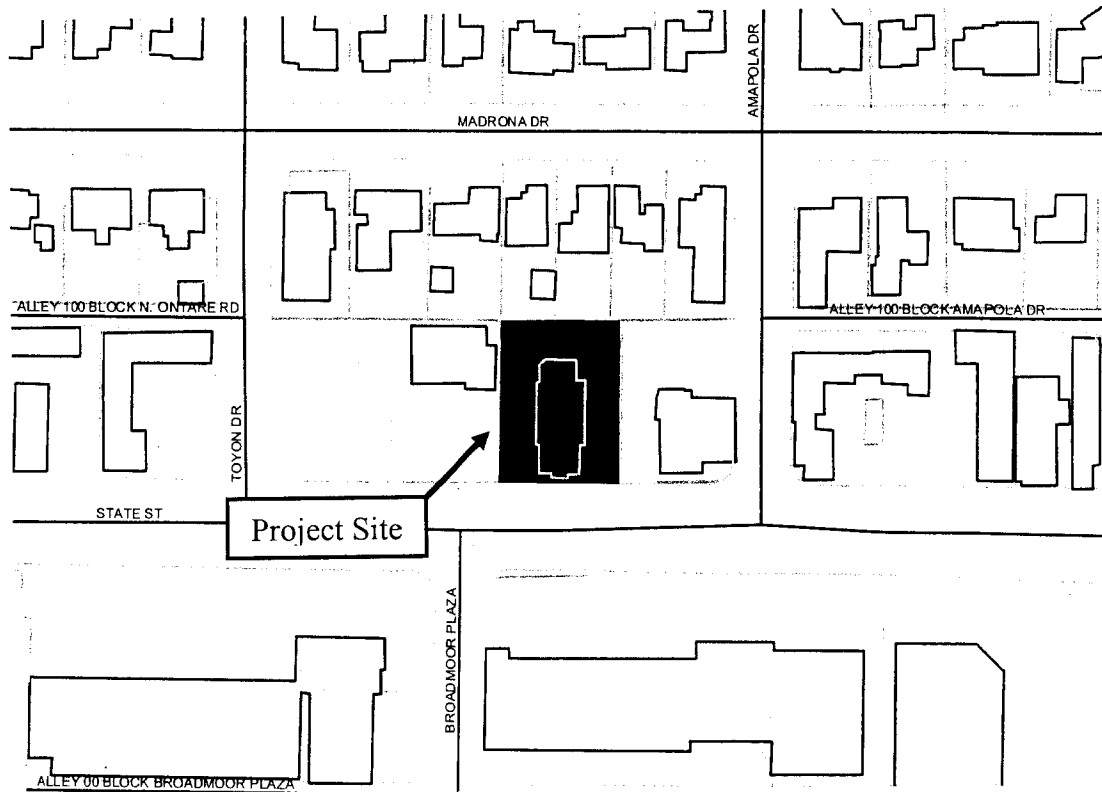
The project consists of a proposal to convert an existing two-story, mixed-use building into five condominium units. The existing building consists of 3,436 square feet (net) of office space on the first floor, four (4) two-bedroom apartments on the second floor and eighteen parking spaces. An exception to the physical standard requirements for condominium conversions, to allow only one parking space for each residential unit instead of two, is requested.

The discretionary applications required for this project are:

1. Modification to allow encroachments into the front yard setback along State Street (SBMC§28.45.008);
2. Tentative Subdivision Map for a one-lot subdivision for the conversion of four residential units and one commercial office space into five condominium units (SBMC§27.07); and
3. Condominium Conversion Permit to convert one commercial space and four residential apartments to five condominium units, including an exception to the parking requirements (SBMC§28.88).

II. RECOMMENDATION

The proposed project conforms to the City's Zoning and Building Ordinances and policies of the General Plan; therefore, Staff recommends that the Staff Hearing Officer approve the project, making the findings outlined in Section VI of this report, and subject to the conditions of approval in Exhibit A.



Vicinity Map for 3408 & 3412 State Street

APPLICATION DEEMED COMPLETE: June 6, 2006
DATE ACTION REQUIRED PER MAP ACT: August 25, 2006

III. SITE INFORMATION AND PROJECT STATISTICS

SITE INFORMATION

Applicant:	David Tabor, AICP	Property Owner:	Robert D. and Deborah D. Hart
Parcel Number:	053-322-009	Lot Area:	15,785 square feet
General Plan:	General Commerce	Zoning:	C-2/SD-2: Commercial/ Upper State Street Area Overlay
Existing Use:	1 office, 4 apartments	Proposed Use:	5 condominium units
Topography:	1% slope towards street		
Adjacent Land Uses:			
North - Residential		East - Commercial	
South - Commercial		West - Commercial	

PROJECT STATISTICS

Units	# of Bedrooms	Unit Size (net)	Private Outdoor Living Space
Commercial Unit	N/A	3,436 square feet	N/A
Residential Unit A	2	872 square feet	198 square feet
Residential Unit B	2	888 square feet	204 square feet
Residential Unit C	2	858 square feet	189 square feet
Residential Unit D	2	872 square feet	198 square feet

IV. ZONING ORDINANCE CONSISTENCY

Standard	Requirement/ Allowance	Existing
Setbacks		
-Front	20 feet	varies from 4 to 26 feet
-Interior	0 feet	varies from 8 to 30 feet
-Rear	0 feet	35 feet
Building Height	3 stories/ 45' maximum	31'-6"
Parking	22 spaces	18 spaces
Lot Area Required for Each Unit (Variable Density)	2-Bdrm units require 2,320 sq. ft. 4 x 2,320 = 9,280 sq. ft.	15,785 square feet
10% Open Space	1,578 square feet	2,332 square feet (14.77%)
Private Outdoor Living Space –	Two bedroom units: 96 square feet	> 96 square feet (see above)
Lot Coverage		
-Building	N/A	3,845 sq. ft. (24.36 %)
-Paving/Driveway	N/A	9,057 sq. ft. (57.38 %)
-Landscaping	N/A	2,883 sq. ft. (18.26 %)

Modification: The project site is located in the SD-2 Overlay Zone, which requires a ten foot front yard setback for one story buildings and a twenty foot front yard setback for two story buildings. The building was originally a one-story structure that encroached into the ten foot front yard setback. In 2004, a remodel of the first floor and a second story addition was approved. Because a second story was added, the front yard setback requirement increased from ten to twenty feet. The approval was granted without the benefit of a Modification to allow encroachments into the front yard setback; therefore, the Modification request is part of this application. The existing building is consistent with all requirements of the Zoning Ordinance except for the encroachments into the front yard setback.

The existing building has a front yard setback that varies from four to twenty-six feet. The trash enclosure encroaches into the front yard setback as well. Staff is supportive of the requested modification because it is necessary to secure an appropriate improvement on a lot, promote

uniformity of improvement and prevent unreasonable hardship. Additionally, the setback of the project is generally consistent with many other buildings on the northerly side of State Street between Las Positas/ San Roque Roads and Ontare Road. The building's second story is set back 26 feet. The project would also dedicate a four foot and variable width easement to the City in order to expand the sidewalk.

V. DISCUSSION

A. COMPLIANCE WITH THE GENERAL PLAN

Land Use Element: The project site has a General Plan land use designation of General Commerce and is located in the North State Street area which is usually referred to as the Upper or Outer State Street. This area is an intensively developed commercial strip, with a scattering of multiple family residential developments. The General Plan calls for a mix of office and hotel uses combined with general commercial uses, and a trend of such uses is expected to continue. Although the General Plan states that little or no residential growth is anticipated for this area, recent trends have shown that residential growth is currently the "highest and best use" in the City and more residential growth in the area is expected.

B. CONDOMINIUM CONVERSION

Exception: The proposed project conforms to the physical standard requirements of the Condominium Conversion Ordinance except for the provision of two parking spaces per residential unit. The Staff Hearing Officer may grant an exception to certain physical standards required for condominium conversions if certain findings can be made. In this case, it is Staff's position that the project includes design features or amenities which offset the project's failure to meet the standard and the economic impact of meeting the standard is not justified by the benefits of doing so. Although mixed use developments that have up to 50% residential use are allowed to reduce the residential parking by 50%, the parking requirement for condominium conversion ordinance is two parking spaces for each two bedroom unit. Staff is supportive of the proposal to provide four parking spaces instead of the required eight parking spaces because it is a mixed use development that has the ability to share the parking associated with the commercial office space. Therefore, the finding that the project includes design features or amenities which offset the project's failure to meet the standard can be made.

C. DESIGN REVIEW

The mixed use development was approved by the Architectural Board of Review (ABR) in 2004. No new development is proposed with the condominium conversion; therefore, the project was not reviewed again by the ABR. The project has been conditioned to comply with the approved landscape plan.

D. ENVIRONMENTAL REVIEW

Environmental Review: Staff and the Environmental Analyst have determined that the project is exempt from further environmental review pursuant to the California Environmental Quality

Guidelines Section 15301 (Existing Facilities) which includes conversions of existing multiple family or single-family residences into common-interest ownership where no physical changes occur which are not otherwise exempt.

VI. RECOMMENDATION/FINDINGS

Staff recommends that the Staff Hearing Officer make the following findings and approve the project with the attached Conditions of Approval (Exhibit A):

A. FRONT YARD SETBACK MODIFICATION (SBMC§28.45.008)

The modification to allow the first floor and trash enclosure to encroach into the front yard setback along State Street is consistent with the purposes and intent of the Zoning Ordinance, is necessary to secure an appropriate improvement on a lot, promote uniformity of improvement and prevent unreasonable hardship. The setback of the project is generally consistent with many other buildings on the northerly side of State Street between Las Positas/ San Roque Roads and Ontare Road and the building's second story is set back 26 feet.

B. EXCEPTIONS TO THE PHYSICAL STANDARDS FOR CONDOMINIUM CONVERSIONS (SBMC§28.88.040.N)

The economic impact of meeting the standard of providing two parking spaces per residential unit is not justified by the benefits of doing so and the project includes design features or amenities which offset the project's failure to meet the standard. Additionally, parking demand will be met by sharing commercial spaces for this mixed use project.

C. TENTATIVE MAP (SBMC §27.07.100)

The tentative subdivision map is consistent with the General Plan and the Zoning Ordinance of the City of Santa Barbara. The site is physically suitable for the proposed condominium conversion and the density of development, and the proposed use is consistent with the vision for this neighborhood of the General Plan. The design of the project is not likely to cause substantial environmental damage, and associated improvements will not cause serious public health problems or conflict with easements, acquired by the public at large, for access through or use of property within the proposed development.

D. CONDOMINIUM CONVERSION (SBMC§28.88.120)

1. All provisions of the Condominium Conversion Ordinance are met and the project will not be detrimental to the health, safety, and general welfare of the community.
2. The proposed conversion is consistent with the General Plan of the City of Santa Barbara.
3. The proposed conversion will conform to the Santa Barbara Municipal Code in

effect at the time the application was deemed complete, except as otherwise provided in the Condominium Conversion Ordinance.

4. The overall design (including project amenities) and physical condition of the conversion will result in a project, which is aesthetically attractive, safe, and of quality construction.
5. The units have not been "affordable rental units" therefore; affordability restrictions do not apply to the project.
6. The project is exempt from the provisions of Section 28.88.130 because the project consists of fewer than five residential units.
7. The Applicant has not engaged in coercive retaliatory action regarding the tenants after the submittal of the first application for City review through the date of approval.

Exhibits:

- A. Conditions of Approval
- B. Site Plan
- C. Applicant Letter dated June 2, 2006

STAFF HEARING OFFICER CONDITIONS OF APPROVAL

3408 AND 3412 STATE STREET
MODIFICATION, TENTATIVE SUBDIVISION MAP AND CONDOMINIUM CONVERSION PERMIT
JULY 19, 2006

In consideration of the project approval granted by the Staff Hearing Officer and for the benefit of the owners and occupants of the Real Property, the owners and occupants of adjacent real property and the public generally, the following terms and conditions are imposed on the use, possession and enjoyment of the Real Property:

- A. **Recorded Agreement.** The following conditions shall be imposed on the use, possession and enjoyment of the Real Property and shall be memorialized in an "Agreement Relating to Subdivision Map Conditions Imposed on Real Property" reviewed and approved as to form and content by the City Attorney, Community Development Director and/or Public Works Director that shall be executed by the Owners concurrent with the Final Map, and recorded by the City prior to issuance of a Certificate of Occupancy for the condominium conversion permit. Said agreement(s) shall be recorded in the Office of the County Recorder:
1. **Uninterrupted Water Flow.** The Owner shall provide for the uninterrupted flow of water through the Real Property including, but not limited to, swales, natural watercourses, conduits and any access road, as appropriate. The Owner is responsible for the adequacy of any project related drainage facilities and for the continued maintenance thereof in a manner which will preclude any hazard of life, health or damage to the Real Property or any adjoining property.
 2. **Recreational Vehicle Storage Prohibition.** No recreational vehicles, boats or trailers shall be stored on the Real Property.
 3. **Landscape Plan Compliance.** The Owner shall comply with the Landscape Plan as approved by the Architectural Board of Review (ABR) on April 12, 2004. Such plan shall not be modified unless prior written approval is obtained from the ABR. The landscaping on the Real Property shall be provided and maintained in accordance with said landscape plan.
 4. **Approved Development.** The development of the Real Property approved by the Staff Hearing Officer on July 19, 2006 is limited to the conversion of one commercial space and four apartments to five condominium units and the improvements shown on the plans signed by the Staff Hearing Officer on said date and on file at the City of Santa Barbara.
 5. **Storm Water Pollution Control Systems Maintenance.** The Owner(s) shall maintain drainage system, storm drain water interceptor and other storm water pollution control devices in accordance with the approved Operations and Maintenance Procedure Plan.
 6. **Required Private Covenants.** Prior to the issuance of a Certificate of Occupancy for any residential condominium unit or the sale of any residential condominium unit within the subdivision, whichever comes first, the Owners shall record in the official records of Santa Barbara County either private covenants, a reciprocal

easement agreement, or a similar agreement which, among other things, shall provide for all of the following:

- a. **Common Area Maintenance.** An express method for the appropriate and regular maintenance of the common-areas, common access ways, common utilities and other similar shared or common facilities or improvements of the development, including the private storm drain system and shared sewer laterals, which methodology shall also provide for an appropriate cost-sharing of such regular maintenance among the various owners of the condominium parcels.
 - b. **Designated Spaces Available for Parking.** A covenant that includes a requirement that all designated parking spaces be kept open and available for the parking of vehicles owned by the residents of the property in the manner for which the parking spaces were designed and permitted.
 - c. **Landscape Maintenance.** A covenant that provides that the landscaping shown on the approved Landscaping Plan shall be maintained and preserved at all times in accordance with the Plan.
 - d. **Trash and Recycling.** A covenant that includes a requirement that adequate space shall be provided and maintained for trash and recycling purposes.
 - e. **Covenant Enforcement.** A covenant that permits each owner to contractually enforce the terms of the private covenants, reciprocal easement agreement, or similar agreement required by this condition.
- B. **Required Prior to Building Permit Issuance.** The following shall be finalized and specified in written form and submitted with the application for a building permit:
1. **State Street Public Improvements.** The Owner shall submit building plans for construction of improvements along the subject property road frontage on State Street. As determined by the Public Works Department, the improvements shall include removal of portion of curb along driveway perpendicular to sidewalk. The building plans shall be prepared by a registered civil engineer or licensed architect and reviewed by the City Engineer.
- C. **Public Works Submittal Prior to Final Map Recordation.** Owners shall submit the following or evidence of completion of the following to the Public Works Department prior to the recordation of the Parcel Map.
1. **Building Permit Required for Conversion.** Evidence that a conversion permit has been issued for the conversion of one office space and four apartments to condominiums.
 2. **Water Rights Assignment.** Owners shall assign to the City of Santa Barbara the exclusive right to extract water from under the Real Property. Said assignment and

any related agreements are subject to the review and approval of the City Attorney. Said agreement shall be recorded in the Office of the County Recorder.

3. **Final Map Preparation.** Owners shall submit a Final Map to the Public Works Department acceptable for recordation. The Final Map shall be prepared by a licensed land surveyor or registered civil engineer in conformance with current Subdivision Map Act and in conformance with the requirements of the City Survey Control Ordinance.
4. **Dedication.** Dedication of variable width easement to the City for sidewalk purposes as shown on the Tentative Subdivision Map and offered on the Final Map.
5. **Conditions on Plans/Signatures.** All Planning Commission Conditions of Approval shall be provided on a full size drawing sheet as part of the drawing sets. A statement shall also be placed on the above sheet as follows: The undersigned have read and understand the above conditions, and agree to abide by any and all conditions which is their usual and customary responsibility to perform, and which are within their authority to perform.

Signed:

_____	_____	_____
Property Owner		Date
_____	_____	_____
Contractor	Date	License No.
_____	_____	_____
Architect	Date	License No.
_____	_____	_____
Engineer	Date	License No.

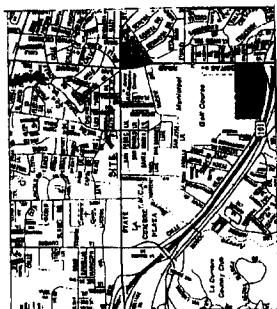
- D. **Prior to Certificate of Occupancy.** Prior to issuance of the Certificate of Occupancy for the condominium conversion permit, the Owners of the Real Property shall submit the following or evidence of completion of the following to the Public Works Department:
1. Recordation of Final Map.
 2. Recordation of the Agreement Relating to Subdivision Map Conditions Imposed on Real Property.
 3. Repair any damaged public improvements (curbs, gutters, sidewalks, etc.) subject to the review and approval of the Public Works Department. Where tree roots are the cause of the damage, the roots shall be pruned under the direction of the City Arborist.
 4. Public improvements constructed as shown on the building plans.

- E. **Litigation Indemnification Agreement.** In the event the Planning Commission approval of the Project is appealed to the City Council, Applicant/Owner hereby agrees to defend the City, its officers, employees, agents, consultants and independent contractors ("City's Agents") from any third party legal challenge to the City Council's denial of the appeal and approval of the Project, including, but not limited to, challenges filed pursuant to the California Environmental Quality Act (collectively "Claims"). Applicant/Owner further agrees to indemnify and hold harmless the City and the City's Agents from any award of attorney fees or court costs made in connection with any Claim.

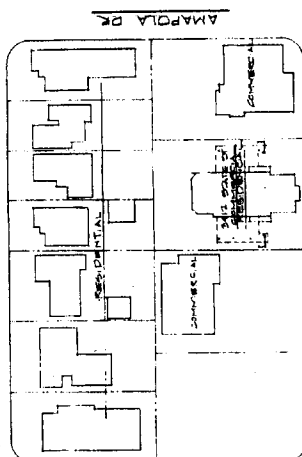
Applicant/owner shall execute a written agreement, in a form approved by the City Attorney, evidencing the foregoing commitments of defense and indemnification within thirty (30) days of the City Council denial of the appeal and approval of the Project. These commitments of defense and indemnification are material conditions of the approval of the Project. If Applicant/Owner fails to execute the required defense and indemnification agreement within the time allotted, the Project approval shall become null and void absent subsequent acceptance of the agreement by the City, which acceptance shall be within the City's sole and absolute discretion. Nothing contained in this condition shall prevent the City or the City's Agents from independently defending any Claim. If the City or the City's Agents decide to independently defend a Claim, the City and the City's Agents shall bear their own attorney fees, expenses and costs of that independent defense.

NOTICE OF TENTATIVE SUBDIVISION MAP AND CONDOMINIUM CONVERSIONS TIME LIMITS:

The Planning Commission's action approving the Tentative Map shall expire two (2) years from the date of approval. The subdivider may request an extension of this time period in accordance with Santa Barbara Municipal Code §27.07.110 or the provisions of the California Subdivision Map Act.



VICINITY MAP



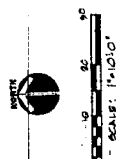
PLAT MAP

GENERAL PLAN DESIGNATION:
COMMERCE, OFFICES AND RESIDENTIAL.

EXISTING AREAS		PERCENTAGE
BUILDING.....	21.34 SQ. FT.	21.34 %
PAVING.....	2087.53 SQ. FT.	57.38 %
LANDSCAPE.....	2813.13 SQ. FT.	18.26 %

1% FALL TOWARD STATE ST.
FLOOD ZONE:.....
"X"= COMMUNITY PANEL 0.60315-0004 "D"=REVISED
DESIGNED 3, 1991

INDEX:		
SHEETS		CONTENTS
A-1		SITE PLAN, V.1/CITY-MAP
A-2		STATISTICS
A-3		RESIDENTIAL-FLOOR PLAN
A-4		RESIDENTIAL-FLOOR PLAN
A-5		EXTERIOR ELEVATIONS
A-6		EXTERIOR ELEVATIONS
A-7		AREA CALCULATIONS
CON-2		LANDSCAPING, OUTDOOR
		AREAS
E-1		LANDSCAPE PLAN



SITE PLAN

SCOPE OF WORK:

ALL PUBLIC IMPROVEMENTS MUST BE COMPLETED AND SIGNED OFF BY THE PUBLIC WORKS INSPECTOR PRIOR TO RECORDING THE MAP AND SUBDIVISION AGREEMENT.

WALL & FLOOR-CEILING ASSEMBLIES CONFORM TO
TITLE 24, CODE OF REGULATION, SECTION 1092.

STATISTICS:
ADDRESS: RESIDENTIAL 3408 "A" STATE STREET
3408 "B" STATE STREET
3408 "C" STATE STREET
3408 "D" STATE STREET
COMMERCIAL - 3412 STATE STREET

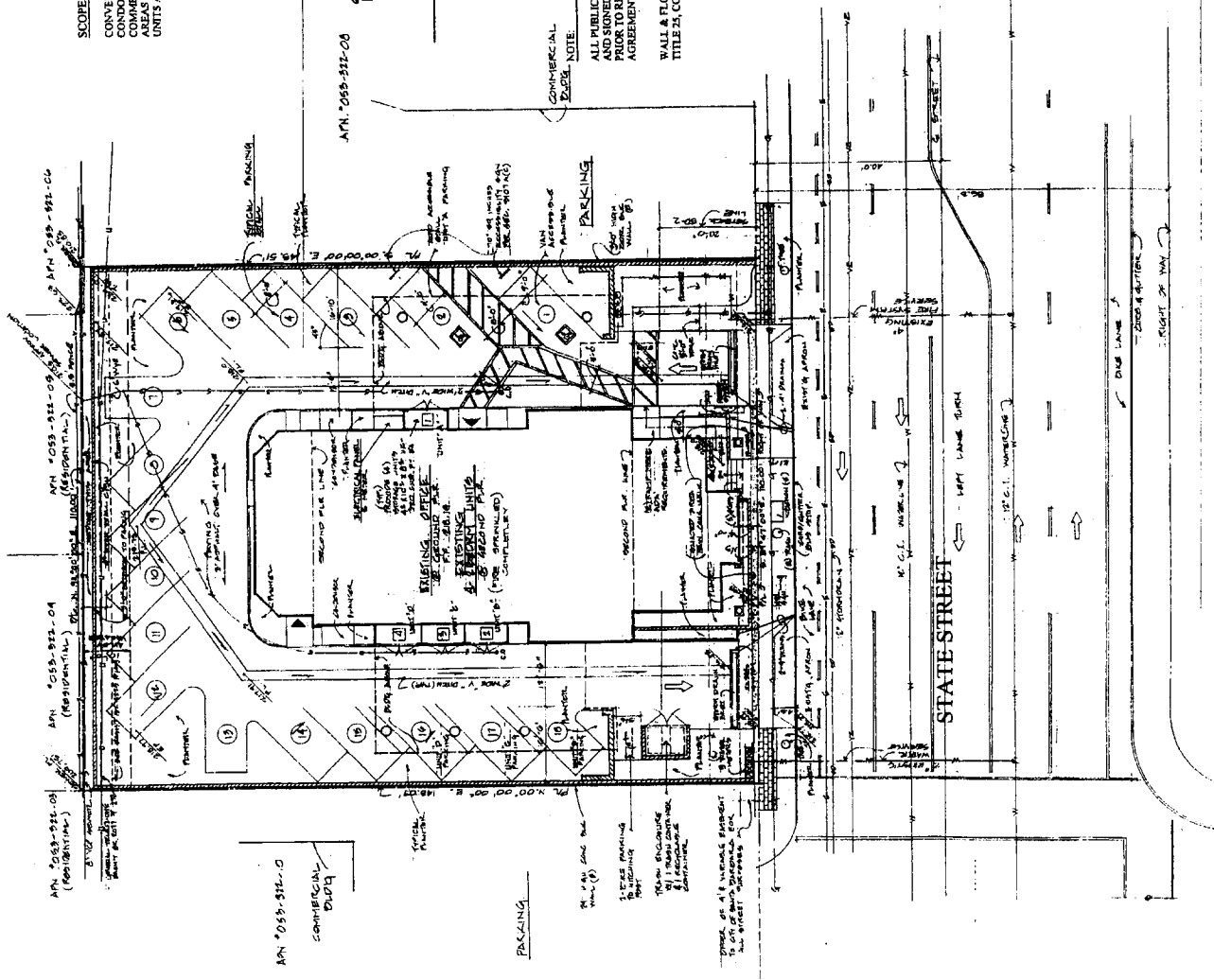
APN: # 031-322-009
 LOT AREA: 3.27/SD-2
 ZONING: C-2/SD-2
 TOTAL LOT AREA: 15,715 SQ.FT.

RESIDENTIAL: "R-1" OCCUPANCY		OUTDR. AREA	
GROSS AREA	NET AREA	GROSS AREA	NET AREA
UNIT "A" 2BDRM.	949 SQ.FT.	872 SQ.FT.	198 SQ.FT.
UNIT "B" 1BDRM.	962 SQ.FT.	883 SQ.FT.	204 SQ.FT.
UNIT "C" 1BDRM.	920 SQ.FT.	838 SQ.FT.	189 SQ.FT.
UNIT "D" 2BDRM.	949 SQ.FT.	872 SQ.FT.	198 SQ.FT.
TOTAL	3722 SQ.FT.	3460 SQ.FT.	

COMMERCIAL, "B" OCCUPANCY
GROSS AREA 3845 SQ.FT. NET AREA 3436 SQ.FT.

PARKING REQUIREMENTS:

RESIDENTIAL:	4+2-BEDROOM UNITS 8 STALLS WITH MIXED USE 8+2 - 4 STALLS REQUIRED
COMMERCIAL:	346 SQ.FT. + 250- 13.74 STALLS 14 STALLS REQUIRED
PROVIDED:	13 UNCOVERED PARKING STALLS 5 COVERED PARKING STALLS TOTAL 18 PARKING STALLS



June 2, 2006

RECEIVED

JUN 22 2006

City of Santa Barbara Staff Hearing Officer
630 Garden Street
Santa Barbara, CA 93101
CITY OF SANTA BARBARA
PLANNING DIVISION

RE: 3408 A, B, C, & D STATE STREET/3412 STATE STREET
MST#2004-00704
PARCEL MAP FOR CONDOMINIUM CONVERSION
MODIFICATION OF REQUIRED FRONT YARD

The owners of the subject property, Bob and Debbie Hart, are seeking your approval for the conversion of the new four units approved for the subject property into residential condominiums, and the office space into a commercial condominium. The application includes a Tentative Map to create the separate parcels, and a Modification to maintain existing improvements in the required front yard.

BACKGROUND

This 15,857 square foot property is located in the C-2/SD-2 zone along the north side of State Street between Toyon and Amapola Drives. The property is bordered by commercially developed property to the east and west, and to the south across State Street. Residential lots which front on Madrona Drive border the lot to the north. A one-story commercial building (3408 State Street), the office of Century-21, A Hart Realty occupied the site. A loop driveway went around the building, entering and exiting onto State Street. A total of 24 parking spaces were located around the perimeter of the lot.

Work was recently completed on a Building Permit that was issued on September 9, 2004 for the construction of four new dwelling units (3412 A, B, C, & D State Street) over the existing building. It had been the owners' intent to rent the four new units for a period of time, and eventually convert them into condominiums. Huge cost increases during the planning period made the construction no longer economically feasible as rentals, and the owners have decided to pursue the condominium conversion at this time. Since the owners had planned on convert at some date, the units were designed with the conversion in mind. There are no changes proposed to the building.

The second floor residential addition is perpendicular to the existing first floor commercial building, and is set back 26 feet from the front lot line. The floor plans for Units A and D are reversed, and Units B and C are nearly identical. Each has efficient floor plan with an open kitchen, dining, living room area, 2 bedrooms, and 2 bathrooms. Each unit has a fire place in the living room, and its own laundry facilities.

A stairway on each side of the building leads to a central hallway on the second floor, which is also accessed by an elevator. Each of the units has its front door along this hallway. Each unit is oriented to a different side of the building, depending on where the outdoor living space is located. The outdoor space is sensibly oriented to the units and should be well used.

STATISTICS

Lot Size:	15,857 sf	
Project Summary:		
Building Coverage-	3,845 sf	(24.36%)
Paving -	9,057 sf	(57.38%)
Landscaping -	2,883 sf	(18.26%)
Common Outdoor Area (10% req.) -	2,332 sf	(14.77%)

Unit Breakdown	Floor area - net (sf)	Bedrooms	Private Outdoor Living Space
Residential Units			
3408 State Unit A	872 sf	2	198 sf
3408 State Unit B	888 sf	2	204 sf
3408 State Unit C	858 sf	2	189 sf
3408 State Unit D	872 sf	2	198 sf
Office Unit			
3412 State	3,436 sf		

Parking:	
Existing -	18 spaces (5 covered, 13 uncovered)
Required -	18 spaces

CONVERSION ISSUES

It is the stated intent of the Condominium Conversion Ordinance to protect the existing rental housing stock, to safeguard tenants, and to ensure that the buildings that house condominiums are sound, secure, and attractive. Since the building has not been previously rented, is new, and received high marks from the Architectural Board of Approval, there are few issues that apply to the project.

Unit Size - Each unit is over 850 square feet, and has 2-bedrooms. This exceeds the minimum size of 600 square feet for converted units and 400 square feet for new units.

Fire Prevention – Each unit has smoke detectors in the hall and bedrooms.

Sound Transmission – Since the buildings were recently constructed, current construction standards were applied. The sound transmission requirement is satisfied by the current Building Code standards.

Utilities - All units currently have separate meters for water, electricity, and gas service. All units conform to the City's water conservation fixtures requirements, and have a separate water shutoff valve. Service lines were placed underground during the construction. Sewer lines exit each unit to the sewer connection behind the building, joining a lateral that extends to the street. An agreement will be developed for the maintenance of the shared lateral.

Private Storage Space - Storage lockers of 300 cubic feet are provided for each unit accessible from the driveway along the western wall of the building.

Laundry - Washer and dryer hookups are provided in each unit.

Condition of Equipment and Appliances – All appliances are brand new and in good working order. Written certification as required will be provided to the initial buyer of each unit.

Public Easements – It does not appear that additional public easements are required for the project, although reasonable accommodations can be made, if necessary.

Refurbishing and Restoration – There is no need to refurbish or restore this new building.

Parking Standards – A covered parking space is assigned to each unit, beneath the building canopy; two on the east side and two on the west. The remaining spaces will be shared between the units and office space, consistent with the City's mixed-use parking standards. This is consistent with the parking demand for such a project, where the parking lot is shared with the commercial development and where each use has different peak parking demand periods. The parking demand does not change with the proposal to convert to condominiums.

Physical Condition – A Physical Elements Report has not been prepared, since the building is new.

Outdoor Living Space - The project exceeds the minimum requirements of private outdoor space. Each space is oriented to a different side of the building, adding to their privacy

Tenant Issues – Tenants have only occupied the building since May. Therefore, there is no rent history. Tenants moving into the units did so knowing there was a conversion pending. They are not typical tenants in this situation in that they will not suffer unforeseen displacement and have not had a long tenure on site. Letters were provided to the tenants prior to their occupancy of the units, and copies were provided as part of this application. Tenants will be notified of the pending conversion, and advised of their rights per the Condominium Conversion Code, as the project progresses.

Some new condominium standards apply to this project, as follows:

Public Improvement Districts – The applicants agree to waive the right to protest future public improvement districts.

Density – Four 2-bedroom units may be allowed on C-2 properties in excess of 9,280 square feet. The project site is 15,857 sf. A total of 6 2-bedroom units could be built here.

Storage of Recreational Vehicles – Due to the site configuration, the storage of recreational vehicles will be prohibited by the CCRs.

MODIFICATION

The former office building on this site was an ideal candidate for transforming into a mixed-use project. The one-story office building was located in the center of the site with an excess of parking surrounding the building. The lot size is sufficient to allow up to six 2-bedroom units. Four were proposed and constructed.

The units were placed perpendicular to the existing building, 26 feet back from the front lot line. The placement allowed for a better orientation of the units to the south, allowed the private outdoor spaces to be separated, and added interest to the architecture. The required front yard for a 2-story building in the SD-2 Zone is 20 feet.

During the review for this project it was noted that by placing a second story on the building it became a 2-story building by definition. This would require a Modification since an existing portion of the 2-story building was closer than 20 feet to the front lot line.

The encroachment can be considered necessary to prevent an unreasonable hardship. Removing the existing portion of the office building back to the twenty feet from the front lot line would have resulted in a significant reduction in the size of the office building which would burden the existing owner/occupant, and may have made the project infeasible, since the floor area could not have been relocated on site. It should be noted that Zoning Code provisions for making conforming additions to non-conforming structures would result in a situation similar to this one. The existing single-story building encroached into the 20-foot front yard, but a conforming (greater than 20 feet from the front lot line) addition was made to it. Similar suitable projects occur frequently that would not otherwise be able to be built.

The encroachment can be considered necessary to secure an appropriate improvement to the property. Without the portion of the existing building at the front of the project, the design would have been more intense in appearance with a flatter facade and a more abrupt rise to its full height. As noted during the Architectural Board of Review comments for this project, the placement of the second story creates a stepped back design that provides a greater pedestrian scale to the building, different viewing angles, and helps break up the massing along the front.

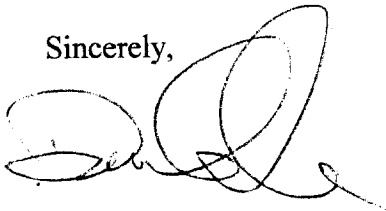
SUMMARY

The units will provide unique homeownership opportunities that will benefit the community while having positive impacts to the surrounding neighborhood. The project upgraded the existing office building and created an example for future mixed-use projects to follow in the Outer State Street Neighborhood.

Overall, the project meets the conversion standards, and is an excellent example of the type of in-fill development that should be encouraged. Four additional units were added to the housing supply, with a net overall positive impact. While they would be market-rate units, given their location and size they would not be considered part of the "high-end" market.

I am looking forward to presenting this project to you at an upcoming meeting. Please call me if you have any questions.

Sincerely,

A handwritten signature in black ink, appearing to read 'David Tabor', with a large, stylized loop at the end.

David Tabor AICP



City of Santa Barbara California

CITY OF SANTA BARBARA STAFF HEARING OFFICER

RESOLUTION NO. 042-06

3408 AND 3412 STATE STREET

MODIFICATION, TENTATIVE SUBDIVISION MAP AND CONDOMINIUM CONVERSION PERMIT

JULY 19 2006

APPLICATION OF DAVID TABOR, AGENT FOR ROBERT D. AND DEBORAH D. HART, PROPERTY OWNERS, 3408 & 3412 STATE STREET, APN 053-322-009, C-2/SD-2: COMMERCIAL AND UPPER STATE STREET AREA OVERLAY ZONES, GENERAL PLAN DESIGNATION: GENERAL COMMERCE (MST2004-00704)

The project consists of a proposal to convert an existing two-story, mixed-use building into five condominium units. The existing building consists of 3,436 square feet (net) of office space on the first floor, four (4) two-bedroom apartments on the second floor and eighteen parking spaces. An exception to the physical standard requirements for condominium conversions, to allow only one parking space for each residential unit instead of two, is requested.

The discretionary applications required for this project are:

1. Modification to allow encroachments into the front yard setback along State Street (SBMC§28.45.008);
2. Tentative Subdivision Map for a one-lot subdivision for the conversion of four residential units and one commercial office space into five condominium units (SBMC§27.07); and
3. Condominium Conversion Permit to convert one commercial space and four residential apartments to five condominium units, including an exception to the parking requirements (SBMC§28.88).

The Environmental Analyst has determined that the project is exempt from further environmental review pursuant to the California Environmental Quality Act Guidelines Section 15301 (Existing Facilities).

WHEREAS, the Staff Hearing Officer has held the required public hearing on the above application, and the Applicant was present.

WHEREAS, no one appeared to speak in favor of or in opposition thereto, and the following exhibits were presented for the record:

1. Staff Report with Attachments, July 19, 2006.
2. Site Plans

NOW, THEREFORE BE IT RESOLVED that the City Staff Hearing Officer:

I. Approved the subject application making the following findings and determinations:

A. Front Yard Setback Modification (SBMC§28.45.008)

The modification to allow the first floor additions to encroach into the front yard setback along State Street is consistent with the purposes and intent of the Zoning Ordinance, is necessary to secure an appropriate improvement on a lot, promote uniformity of improvement and prevent unreasonable hardship. The setback of the project is generally consistent with many other buildings on the northerly side of State Street between Las Positas/ San Roque Roads and Ontare Road and the building's second story is set back 26 feet.

B. Exceptions To The Physical Standards For Condominium Conversions (SBMC§28.88.040.N)

The economic impact of meeting the standard of providing two parking spaces per residential unit is not justified by the benefits of doing so and the project includes design features or amenities which offset the project's failure to meet the standard. Additionally, parking demand will be met by sharing commercial spaces for this mixed use project. The project complies with the mixed use parking requirement.

C. Tentative Map (SBMC §27.07.100)

The tentative subdivision map is consistent with the General Plan and the Zoning Ordinance of the City of Santa Barbara. The site is physically suitable for the proposed condominium conversion and the density of development, and the proposed use is consistent with the vision for this neighborhood of the General Plan. The design of the project is not likely to cause substantial environmental damage, and associated improvements will not cause serious public health problems or conflict with easements, acquired by the public at large, for access through or use of property within the proposed development.

D. Condominium Conversion (SBMC§28.88.120)

1. All provisions of the Condominium Conversion Ordinance are met and the project will not be detrimental to the health, safety, and general welfare of the community.
2. The proposed conversion is consistent with the General Plan of the City of Santa Barbara.
3. The proposed conversion will conform to the Santa Barbara Municipal Code in effect at the time the application was deemed complete, except as otherwise provided in the Condominium Conversion Ordinance.
4. The overall design (including project amenities) and physical condition of the conversion will result in a project, which is aesthetically attractive, safe, and of quality construction.

5. The units have not been "affordable rental units" therefore; affordability restrictions do not apply to the project.
6. The project is exempt from the provisions of Section 28.88.130 because the project consists of fewer than five residential units.
7. The Applicant has not engaged in coercive retaliatory action regarding the tenants after the submittal of the first application for City review through the date of approval.

II. Said approval is subject to the following conditions:

In consideration of the project approval granted by the Staff Hearing Officer and for the benefit of the owners and occupants of the Real Property, the owners and occupants of adjacent real property and the public generally, the following terms and conditions are imposed on the use, possession and enjoyment of the Real Property:

- A. **Recorded Agreement.** The following conditions shall be imposed on the use, possession and enjoyment of the Real Property and shall be memorialized in an "Agreement Relating to Subdivision Map Conditions Imposed on Real Property" reviewed and approved as to form and content by the City Attorney, Community Development Director and/or Public Works Director that shall be executed by the Owners concurrent with the Final Map, and recorded by the City prior to issuance of a Certificate of Occupancy for the condominium conversion permit. Said agreement(s) shall be recorded in the Office of the County Recorder:
 1. **Uninterrupted Water Flow.** The Owner shall provide for the uninterrupted flow of water through the Real Property including, but not limited to, swales, natural watercourses, conduits and any access road, as appropriate. The Owner is responsible for the adequacy of any project related drainage facilities and for the continued maintenance thereof in a manner which will preclude any hazard of life, health or damage to the Real Property or any adjoining property.
 2. **Recreational Vehicle Storage Prohibition.** No recreational vehicles, boats or trailers shall be stored on the Real Property.
 3. **Landscape Plan Compliance.** The Owner shall comply with the Landscape Plan as approved by the Architectural Board of Review (ABR) on April 12, 2004. Such plan shall not be modified unless prior written approval is obtained from the ABR. The landscaping on the Real Property shall be provided and maintained in accordance with said landscape plan.
 4. **Approved Development.** The development of the Real Property approved by the Staff Hearing Officer on July 19, 2006 is limited to the conversion of one commercial space and four apartments to five condominium units and the improvements shown on the plans signed by the Staff Hearing Officer on said date and on file at the City of Santa Barbara.

5. **Storm Water Pollution Control Systems Maintenance.** The Owner(s) shall maintain drainage system, storm drain water interceptor and other storm water pollution control devices in accordance with the approved Operations and Maintenance Procedure Plan.
 6. **Required Private Covenants.** Prior to the issuance of a Certificate of Occupancy for any residential condominium unit or the sale of any residential condominium unit within the subdivision, whichever comes first, the Owners shall record in the official records of Santa Barbara County either private covenants, a reciprocal easement agreement, or a similar agreement which, among other things, shall provide for all of the following:
 - a. **Common Area Maintenance.** An express method for the appropriate and regular maintenance of the common areas, common access ways, common utilities and other similar shared or common facilities or improvements of the development, including the private storm drain system and shared sewer laterals, which methodology shall also provide for an appropriate cost-sharing of such regular maintenance among the various owners of the condominium parcels.
 - b. **Designated Spaces Available for Parking.** A covenant that includes a requirement that all designated parking spaces be kept open and available for the parking of vehicles owned by the residents of the property in the manner for which the parking spaces were designed and permitted.
 - c. **Landscape Maintenance.** A covenant that provides that the landscaping shown on the approved Landscaping Plan shall be maintained and preserved at all times in accordance with the Plan.
 - d. **Trash and Recycling.** A covenant that includes a requirement that adequate space shall be provided and maintained for trash and recycling purposes.
 - e. **Covenant Enforcement.** A covenant that permits each owner to contractually enforce the terms of the private covenants, reciprocal easement agreement, or similar agreement required by this condition.
- B. **Public Works Submittal Prior to Final Map Recordation.** Owners shall submit the following or evidence of completion of the following to the Public Works Department prior to the recordation of the Parcel Map.
1. **Building Permit Required for Conversion.** Evidence that a conversion permit has been issued for the conversion of one office space and four apartments to condominiums. Landscape plan shall show restoration of the planter at the southwest corner.
 2. **State Street Public Improvements.** The Owner shall submit building plans for construction of improvements along the subject property road frontage on State

Street. As determined by the Public Works Department, the improvements shall include 14 inch sidewalk expansion across driveway and removal of portion of curb along driveway perpendicular to sidewalk. The building plans shall be prepared by a registered civil engineer or licensed architect and reviewed by the City Engineer.

3. **Final Map Preparation.** Owners shall submit a Final Map to the Public Works Department acceptable for recordation. The Final Map shall be prepared by a licensed land surveyor or registered civil engineer in conformance with current Subdivision Map Act and in conformance with the requirements of the City Survey Control Ordinance.
4. **Dedication.** Dedication of variable width easement to the City for sidewalk purposes as shown on the Tentative Subdivision Map and offered on the Final Map.
5. **Conditions on Plans/Signatures.** All Planning Commission Conditions of Approval shall be provided on a full size drawing sheet as part of the drawing sets. A statement shall also be placed on the above sheet as follows: The undersigned have read and understand the above conditions, and agree to abide by any and all conditions which is their usual and customary responsibility to perform, and which are within their authority to perform.

Signed:

_____ Property Owner		_____ Date
_____ Contractor	_____ Date	_____ License No.
_____ Architect	_____ Date	_____ License No.
_____ Engineer	_____ Date	_____ License No.

- C. **Prior to Certificate of Occupancy.** Prior to issuance of the Certificate of Occupancy for the condominium conversion permit, the Owners of the Real Property shall submit the following or evidence of completion of the following to the Public Works Department:
1. Recordation of Final Map.
 2. Recordation of the Agreement Relating to Subdivision Map Conditions Imposed on Real Property.

3. Repair any damaged public improvements (curbs, gutters, sidewalks, etc.) subject to the review and approval of the Public Works Department. Where tree roots are the cause of the damage, the roots shall be pruned under the direction of the City Arborist.
4. Public improvements constructed as shown on the building plans.

D. **Litigation Indemnification Agreement.** In the event the Planning Commission approval of the Project is appealed to the City Council, Applicant/Owner hereby agrees to defend the City, its officers, employees, agents, consultants and independent contractors ("City's Agents") from any third party legal challenge to the City Council's denial of the appeal and approval of the Project, including, but not limited to, challenges filed pursuant to the California Environmental Quality Act (collectively "Claims"). Applicant/Owner further agrees to indemnify and hold harmless the City and the City's Agents from any award of attorney fees or court costs made in connection with any Claim.

Applicant/owner shall execute a written agreement, in a form approved by the City Attorney, evidencing the foregoing commitments of defense and indemnification within thirty (30) days of the City Council denial of the appeal and approval of the Project. These commitments of defense and indemnification are material conditions of the approval of the Project. If Applicant/Owner fails to execute the required defense and indemnification agreement within the time allotted, the Project approval shall become null and void absent subsequent acceptance of the agreement by the City, which acceptance shall be within the City's sole and absolute discretion. Nothing contained in this condition shall prevent the City or the City's Agents from independently defending any Claim. If the City or the City's Agents decide to independently defend a Claim, the City and the City's Agents shall bear their own attorney fees, expenses and costs of that independent defense.

This motion was passed and adopted on the 19 day of July, 2006 by the Staff Hearing Officer of the City of Santa Barbara.

I hereby certify that this Resolution correctly reflects the action taken by the City of Santa Barbara Staff Hearing Officer at its meeting of the above date.



Kathleen Goo, Staff Hearing Officer Secretary



Date

PLEASE BE ADVISED:

1. This action of the Staff Hearing Officer can be appealed to the Planning Commission or the City Council within ten (10) days ~~after~~ the date the action was taken by the Staff Hearing Officer.
2. If you have any existing zoning violations on the property, other than those included in the conditions above, they must be corrected within thirty (30) days of this action.
3. **PLEASE NOTE: A copy of this resolution shall be reproduced on the first sheet of the drawings submitted with the application for a building permit.** The location, size and design of the construction proposed in the application for the building permit shall not deviate from the location, size and design of construction approved in this modification.
4. **NOTICE OF TENTATIVE SUBDIVISION MAP AND CONDOMINIUM CONVERSIONS TIME LIMITS:**

The Planning Commission's action approving the Tentative Map shall expire two (2) years from the date of approval. The subdivider may request an extension of this time period in accordance with Santa Barbara Municipal Code §27.07.110 or the provisions of the California Subdivision Map Act.

ACTUAL TIME: 1:36 P.M.

D. APPLICATION OF DAVID TABOR, AGENT FOR ROBERT D. AND DEBORAH D. HART, PROPERTY OWNERS, 3408 & 3412 STATE STREET, APN 053-322-009, C-2/SD-2: COMMERCIAL AND UPPER STATE STREET AREA OVERLAY ZONES, GENERAL PLAN DESIGNATION: GENERAL COMMERCE (MST2004-00704)

The project consists of a proposal to convert an existing two-story, mixed-use building into five condominium units. The existing building consists of 3,436 square feet (net) of office space on the first floor, four (4) two-bedroom apartments on the second floor and eighteen parking spaces. An exception to the physical standard requirements for condominium conversions, to allow only one parking space for each residential unit instead of two, is requested.

The discretionary applications required for this project are:

1. Modification to allow encroachments into the front yard setback along State Street (SBMC§28.45.008);
2. Tentative Subdivision Map for a one-lot subdivision for the conversion of four residential units and one commercial office space into five condominium units (SBMC§27.07); and
3. Condominium Conversion Permit to convert one commercial space and four residential apartments to five condominium units, including an exception to the parking requirements (SBMC§28.88).

The Environmental Analyst has determined that the project is exempt from further environmental review pursuant to the California Environmental Quality Act Guidelines Section 15301 (Existing Facilities).

David Tabor, Applicant; and Robert Hart, Property Owner, present.

Ms. Weiss announced that she read the Staff Report recommendation for the proposed project and also visited the site and surrounding neighborhood.

Kathleen Kennedy, Assistant Planner, gave the Staff presentation and recommendation.

Ms. Weiss commented on the sidewalk expansion and that the landscape planting on the plans have resulted in a small parking space with existing paving and a cement parking block that should be corrected back to a landscape planting as the original plans stated.

The Public Hearing was opened at 1:47 p.m., and as no one wished to speak, closed at 1:48 p.m.

With regard to the Upper State Street Study and other various projects planned for the area, Ms. Weiss noted that the bulk mass of the building does block the view of the mountains and cautioned the applicant that the building may be a future reference in various studies as a new two-story addition.

ACTION:

Assigned Resolution No. 042-06

Approval of the Modification and the Tentative Subdivision Map and condominium conversion making the findings contained in Staff Report with the following changes: 1) Findings for Modification A shall include a statement: The Modification to allow the first floor addition to encroach into the front yard; and 2) Findings for Modification B shall include a statement that the project complies with the City's mixed-use parking standard and subject to the revised Conditions of Approval, to include: 1) Condition B1. Landscape Plan Compliance. Shall include statement requiring compliance with approved landscape requirement, and to restore the planter at the southwest corner.

Ms. Weiss announced the ten calendar day appeal period.

**** THE HEARING RECESSED FROM 1:55 P.M. UNTIL 1:59 P.M. ****

ACTUAL TIME: 2:00 P.M.

E. APPLICATION OF BRIAN CEARNAL FOR GRANADA TOWER, LLC, 1210, 1212 AND 1216 STATE STREET (ALSO KNOWN AS THE GRANADA TOWER), APN: 039-183-050, -051, AND -052, C-2 ZONE, GENERAL PLAN DESIGNATION: GENREAL COMMERCIAL / CBD (MST2005-00323)

The proposed project consists of the subdivision of the Granada Tower into two (2) two-bedroom residential condominium units and 34,875 square feet of commercial condominium space. The project also includes a structural retrofit of the building, replacing the existing exterior fire escape with an enclosed staircase, a new roof and roof structure, new window dormers in the roof, creating an outdoor living area on the roof, uncovering original windows on the south elevation of the building and infilling existing windows on north elevation. This building is on the City's Potential Historic Resources list.

The discretionary applications required for this project are:

1. Modification of the residential parking requirement for each of the two residential units (SBMC §28.90);
2. A Modification to allow a change of use (commercial to residential) in a building that is nonconforming to height (SBMC §28.87.030 D);

IN-PROGRESS REVIEW

11. 3408 STATE ST

C-2/SD-2 Zone

Assessor's Parcel Number: 053-322-009
Application Number: MST2002-00847
Architect: Dorl Pedersen
Owner: Deborah Hart

(Proposal to construct a 3,702 square foot second-story addition to an existing 3,762 square foot commercial building that will result in a mixed-use building with four second-story residential units on a 15,759 square foot lot. There are 21 proposed uncovered parking spaces. A modification is requested for the required 10 percent open space.)

(Proposal to reinstate the preliminary approval which expired in January 2003. The applicant is requesting an In-Progress Review for the project details and landscaping plan.)

(6:25)

Richard Johnson, representing the Architect, and the Landscape Architect, present.

Motion: Final approval of the project and indefinite continuance of the details to the Consent Calendar with the following conditions: 1) The project is in substantial conformance with the previous preliminary approval. 2) The colors shall be muted and traditional. 3) The roof blend style shall be restudied. 4) Provide a landscape plan. 5) Study appropriate solid wall heights to serve as screening at the two elevated facades near the interior lot lines.

Action: LeCron/Bartlett, 5/2/0. Pierron and Six opposed.

FINAL REVIEW

12. 420 CALLE LAS CALERAS

A-1/SD-3 Zone

Assessor's Parcel Number: 047-021-027
Application Number: MST2000-00838
Architect: James LeCron
Owner: Douglas & Carol Fell
Architect: David Van Hoy
Agent: Mark & Lisa Fell

(Proposal for a new one-story 3,530 square foot residence including an attached two-car garage on a vacant 51,400 square foot lot, located in the Hillside Design District. This project has been revised to propose a reduction in the amount of grading on site. There are 2,245 cubic yards of cut and 3,000 cubic yards of fill proposed for a total import calculation of 755 cubic yards of grading. The new grading calculations have a 71 percent import reduction from the previously reviewed plan. Other proposed changes include the reduction of an uncovered guest parking (from three spaces to two spaces) and alteration of the existing driveway to be serpentine.)

(Final approval of the project is requested.)

(PROJECT REQUIRES COMPLIANCE WITH PLANNING COMMISSION RESOLUTION NO. 042-01.)

(7:01)

James LeCron, Architect, Kris Kimple, Landscape Architect, and Mark Fell, owner, present.

Motion: Final approval of the project as submitted.

Action: Larson/Pierron, 6/0/0.

FINAL REVIEW

C. 3408 STATE ST

C-2/SD-2 Zone

Assessor's Parcel Number: 053-322-009
Application Number: MST2002-00847
Architect: Don Pedersen
Owner: Deborah Hart

(Proposal to construct a 3,702 square foot second-story addition to an existing 3,762 square foot commercial building that will result in a mixed-use building with four second-story residential units on a 15,759 square foot lot. There are 21 proposed uncovered parking spaces. A modification is requested for the required 10 percent open space.)

Final approval of the details as submitted with conditions on the landscape plan as noted on the plans.

FINAL REVIEW

D. 1025 E MONTECITO ST

R-2 Zone

Assessor's Parcel Number: 031-372-017
Application Number: MST2003-00260
Architect: Garcia Architects
Applicant: Jose Santoyo

(A previous project was approved under MST2000-00697 and a building permit was issued. This is a revised proposal to construct a 1,682 square foot two-story residential unit and a 1,071 square foot four-car garage. The new construction will be attached to an existing 940 square foot one-story residence on a 7,555 square foot lot.)

(Final approval of the project is requested.)

Final approval of the project architecture as submitted and indefinite continuance of the landscape plan details.

NEW ITEM

E. 216 W ANAPAMU ST

C-2 Zone

Assessor's Parcel Number: 039-171-014
Application Number: MST2004-00189
Owner: Kenneth Hoffman
Architect: Alex Pujo

(This is an enforcement case. Proposal for as-built changes including the replacement of wood siding, roofing, fencing, and fountain to the existing 1,290 square foot one-story residence (216 W. Anapamu Street) at the front of the 8,400 square foot lot. The proposal also includes as-built changes reviewed under MST94-00210 including exterior changes to an existing 1,940 square two-story residence (218 W. Anapamu Street). Proposed as-built changes to the rear residence consist of entrance reorientation, change in balcony rail materials, and window replacements.)

(PROJECT REQUIRES ENVIRONMENTAL ASSESSMENT.)

Continued indefinitely due to the applicant's absence.

NEW ITEM

F. 305 E HALEY ST

C-M Zone

Assessor's Parcel Number: 031-211-019
Application Number: MST2004-00238
Owner: John & Janna Price
Architect: Lenvik & Minor Architects

(Proposal to replace a chain link fence and rolling gate with a wrought iron fence and gate. The proposal includes changing an existing wood handrail detail to a wrought iron detail.)

Final approval of the project with conditions as noted on the plans and indefinite continuance of the landscape plan details.

27.02.165 Recreational Open Space.

Recreational Open Space is open space on the project (exclusive of the required front setback area and driveway), which shall be used exclusively for leisure and recreational purposes, for the use and enjoyment of occupants (and their visitors) of units on the project and to which such occupants (and their visitors) shall have the right of use and enjoyment. Accessory structures such as swimming pools, recreational buildings, and landscaped areas may be included as open space. (Ord. 3952 §1, 1978.)

27.02.168 Staff Hearing Officer.

The Staff Hearing Officer means the Community Development Director or his or her designee. For purposes of this Title 27, the Staff Hearing Officer shall serve as the Advisory Agency for the City as specified in Chapter 27.03. (Ord. 5380, 2005.)

27.02.170 Stock Cooperative.

Stock cooperative means a development in which a corporation is formed or availed of, primarily for the purpose of holding title to, either in fee simple or for a term of years, improved real property, and all or substantially all of the shareholders of the corporation receive a right of exclusive occupancy in a portion of the real property, title to which is held by the corporation. (Ord. 5380, 2005; Ord. 3952 §1, 1978; Ord. 3790 §1, 1975.)

27.02.180 Tree.

A woody, self-supporting, main trunk, perennial plant. (Ord. 5380, 2005; Ord. 3952 §1, 1978; Ord. 3790 §1, 1975.)

Chapter 27.03

GENERAL PROCEDURAL PROVISIONS

Sections:

27.03.010 Advisory Agency.

27.03.020 Appeal Board.

27.03.030 Public Hearing Procedures.

27.03.040 Fees.

27.03.010 Advisory Agency.

The Planning Commission or the Staff Hearing Officer shall serve as the Advisory Agency for the City of Santa Barbara as designated below:

A. **THE PLANNING COMMISSION.** The Planning Commission is hereby designated as the Advisory Agency for the purposes of this Title 27 and the Subdivision Map Act, except as such duties are assigned to the Staff Hearing Officer pursuant to Subsection B below.

B. **THE STAFF HEARING OFFICER.** The Staff Hearing Officer is hereby designated as the Advisory Agency for the purposes of this Title 27 and the Subdivision Map Act for the following types of applications, unless the application requires another discretionary approval from the Planning Commission under any other provision of this Code:

1. Lot line adjustments between four (4) or fewer existing adjoining parcels, where the land taken from one parcel is added to an adjoining parcel, and where a greater number of parcels than originally existed is not thereby created.

2. Subdivisions that will result in four (4) or fewer parcels or condominium units, unless any of the following conditions apply to the application:

a. Any portion of the real property within the proposed subdivision is located in a Hillside Design District, as defined in Chapter 22.68 of this Code;

b. The proposed subdivision requires a public street waiver pursuant to Section 22.60.300 of this Code;

or

c. Any of the following creeks traverse or are immediately adjacent to the proposed subdivision: Arroyo Burro Creek, Arroyo Hondo Creek, Cieneguitas Creek, Laguna Creek/Channel, Lighthouse Creek, Mission Creek or Sycamore Creek, or their tributaries as shown on the City of Santa Barbara Creek and Tributaries Map for Tentative Subdivision Maps that require Planning Commission action adopted by resolution of the City Council.

3. Residential condominium conversions pursuant to Chapter 28.88 of this Code involving four (4) or fewer residential units.
4. New commercial condominiums of up to 3,000 square feet of floor area.
5. Non-residential condominium conversions.
6. Requests for extensions of the time at which an approved tentative map expires for all approved tentative maps. (Ord. 5380, 2005.)

27.03.020 Appeal Board.

The Planning Commission or the City Council shall serve as the Appeal Board for the City of Santa Barbara as designated below:

A. **THE PLANNING COMMISSION.** The Planning Commission is hereby designated as the Appeal Board charged with the duty of hearing and making determinations upon appeals from decisions of the Staff Hearing Officer serving as the Advisory Agency. Decisions of the Planning Commission acting as the Appeal Board may be appealed to the City Council.

B. **THE CITY COUNCIL.** The City Council is hereby designated as the Appeal Board charged with the duty of hearing and making determinations upon appeals from decisions of the Planning Commission serving as the Advisory Agency or the Appeal Board. (Ord. 5380, 2005.)

27.03.030 Public Hearing Procedures.

Whenever a provision of this Title 27 or the Subdivision Map Act requires a public hearing, notice of such public hearing shall comply with the following provisions:

A. **REQUIRED METHODS OF NOTICE.** Notice shall be given in each of the following ways:

1. Notice of the hearing shall be sent by first class mail at least 10 calendar days prior to the hearing to the owner of the subject real property or the owner's duly authorized agent, and to the project applicant; and
2. Notice of the hearing shall be sent by first class mail at least 10 calendar days prior to the hearing to all owners of real property as shown on the latest equalized assessment roll within 300 feet of the real property that is the subject of the hearing. If the number of owners to whom notice would be mailed pursuant to this paragraph is greater than 1,000, the City, in lieu of mailed notice, may provide notice by placing a display advertisement of at least one-eighth page in at least one newspaper of general circulation within the City at least 10 calendar days prior to the hearing; and
3. Notice of the hearing shall be published once in a newspaper of general circulation within the City at least 10 calendar days prior to the hearing.

B. **SUPPLEMENTAL METHODS OF NOTICE.** In addition to the required methods of notice specified in Subsection A above, the City may also require notice of the hearing in any other manner it deems necessary or desirable, including, but not limited to, posted notice on the project site. Such additional noticing methods are only intended to supplement the required methods of notice specified in Subsection A above, and the claim of any person or entity that they did not receive such supplemental notice or that supplemental notice was not given pursuant to this Subsection B shall not constitute grounds for any court to invalidate the actions of the City for which the notice was given.

C. **CONTENT OF NOTICE.** The notice shall include all of the following information:

1. The date, time, and place of the public hearing;
2. The identity of the hearing body or officer;
3. A general explanation of the matter to be considered; and
4. A general description, in text or by diagram, of the location of the real property, if any, that is the subject of the hearing.

D. **REQUEST FOR NOTICE.** When a provision of this Chapter or the Subdivision Map Act requires a public hearing, notice of such public hearing shall also be mailed at least 10 days prior to the hearing to any person who has filed a written request for notice with either the City Clerk or with any other person designated to receive such requests. The City may charge a fee for providing this service as set by resolution of the City Council. Any request to receive such notice shall be renewed annually. The members of the Planning Commission shall receive notice of all public hearings scheduled before the Staff Hearing Officer.

E. **CONTINUANCES.** Any public hearing noticed pursuant to this Section may be continued to a time certain without further notice. (Ord. 5380, 2005.)

27.03.040 Fees.

A processing fee in an amount established by resolution of the City Council shall be paid for every application filed pursuant to this Title 27. Such fee will be due and payable at the time the application is filed unless another time is specified by this Code or by resolution of the City Council. This processing fee shall be charged in addition to any other fees required by any other provision of this Code. (Ord. 5380, 2005.)

Chapter 28.92

VARIANCES, MODIFICATIONS AND ZONE CHANGES

Sections:

28.92.010	In General.	28.92.080	Resolution of Decision.
28.92.020	Initiation of Amendments and Changes of Zone Boundaries.	28.92.090	Variances.
28.92.030	Applications.	28.92.100	Required Findings for Approval of Variances.
28.92.040	Filing Fees.	28.92.110	Modifications.
28.92.050	Public Hearings.	28.92.120	Limitations on Refiling.
28.92.060	Notices.		
28.92.070	Community Development Department Report.		

28.92.010 In General.

The following regulations shall apply to the granting of variances, modifications and zone changes. (Ord. 5380, 2005.)

28.92.020 Initiation of Amendments and Changes of Zone Boundaries.

Whenever the public necessity, convenience, general welfare or good zoning practice justify such action, either the Planning Commission or City Council may, upon its own motion, or the Planning Commission upon the verified application of any property owner or authorized agent and following a public hearing, may initiate proceedings to amend, supplement or change the zones, regulations or districts established by this title.

With the exception of amendments changing property from one zone to another, or changing the boundary of any zone, amendments may be made in the same manner as this title was adopted. (Ord. 5380, 2005.)

28.92.030 Applications.

Applications for variances, modifications and changes of zone shall be made in writing to the Community Development Director. The Community Development Director may provide forms for such purposes and may prescribe the type of information to be provided thereon. No application shall be received unless it complies with such requirements. Applications filed pursuant to this chapter shall be numbered consecutively in the order of their filing and shall become a part of the permanent official records of the City of Santa Barbara. (Ord. 5380, 2005.)

28.92.040 Filing Fees.

Before accepting any application for filing pursuant to this chapter, the City shall charge and collect the fees established by resolution of the City Council. (Ord. 5380, 2005.)

28.92.050 Public Hearings.

Prior to taking any action on an application for a variance, change of zone, or modification, a public hearing shall be held before the Staff Hearing Officer or Planning Commission as specified below:

A. VARIANCES. All applications for variances shall be heard and approved, conditionally approved or denied by the Planning Commission.

B. CHANGE OF ZONE. All applications for changes of zone shall be approved, conditionally approved or denied by the Planning Commission, which shall make a recommendation to the City Council regarding the change of zone, if approved or conditionally approved.

C. MODIFICATIONS. Unless the application for a modification requires a discretionary action by the Planning Commission under another provision of this Code, all applications for modifications shall be heard and approved, conditionally approved or denied by the Staff Hearing Officer. (Ord. 5380, 2005.)

28.92.060 Notices.

Notice of public hearings required pursuant to this Chapter 28.92 shall be provided in accordance with Section 28.87.380 of this Code. (Ord. 5380, 2005.)

053-322-011
SOUTHLAND CORPORATION THE
PO BX 711
DALLAS, TX 75221

053-323-006
ROSEN COURTNEY G TRUST
3326 MADRONA DR
SANTA BARBARA, CA 93105

053-323-007
GUPTA PAWAN K
3332 MADRONA DR
SANTA BARBARA, CA 93105

053-324-001
SESMA RICHARD B/ELLEN V
3331 MADRONA DR
SANTA BARBARA, CA 93105

053-324-002
HART ROBERT D
3412 STATE ST
SANTA BARBARA, CA 93105

053-324-003
WOOLFOLK OSCAR H
JR/MARCELLA J TTEES
3319 MADRONA DR
SANTA BARBARA, CA 93105

053-324-014
TENG NICOLAS/HUITZU HUANG
TRUSTEES (FOR)
3344 STATE ST
SANTA BARBARA, CA 93105

DATE & TIME PRINTED:
6/30/06 3:59 PM

SUBJECT PROPERTY
053-322-009

CATHERINE MCCAMMON
CITIZENS PLANNING ASSOCIATION
622 SUNRISE VISTA WAY
SANTA BARBARA, CA 93109

CITIZENS PLANNING
ASSOCIATION
916 ANACAPA STREET
SANTA BARBARA, CA 93101

JAMES O. KAHAN
ALLIED NEIGHBORHOOD
ASSOCIATION.
3709 DIXON STREET
SANTA BARBARA, CA 93105-2419

RECEPTIONIST
CITY OF SANTA BARBARA
PLANNING DIVISION
630 GARDEN ST
SANTA BARBARA, CA 93101

JAMES O. KAHAN
GROVE LANE AREA
NEIGHBORHOOD ASSN
3709 DIXON STREET
SANTA BARBARA, CA 93105-2419

CARRIE BROWN
FOOTHILL PRESERVATION LEAGUE
1000 CIENEGUITAS ROAD
SANTA BARBARA, CA 93110

SALLY SESONSKE
SAN ROQUE GARD./PEACH GROVE
ASSN.
3662 SAN GABRIEL LANE
SANTA BARBARA, CA 93105

DAVID TABOR
1326 KENWOOD DRIVE
SANTA BARBARA, CA 93109

\\GARDENSVR\COMDEV\GROUP
FOLDERS\PLAN\MAILED
NOTICING\MAILING
LISTS\SHO\3408 & 3412 STATE
STREET 6-30-06.DOC

6. Commented they do not support conversion of non-conforming non-habitable space to habitable space.
7. Consensus of the Commission to not support the appeal. Other options and alternatives have yet to be explored such as expansion into the rear yard.

Ms. Weiss requested Mr. Vincent to clarify the Commission's option of denial of the modification or denial of the appeal so that it is clear to the applicant.

Mr. Vincent clarified that the Commission should deny the appeal and deny the modification, which would also preclude the minor two foot front setback encroachment proposal by the Staff Hearing Officer's action. Then, the applicant's options would be to either explore other options consistent with the Zoning Ordinance, present another modification request, or appeal the decision to City Council.

MOTION: Mahan/Jacobs

Assigned Resolution No. 044-06

To deny the appeal of the decision made by the Staff Hearing Officer on August 30, 2006, and to deny the modification for encroachment into the front and side yards.

This motion carried by the following vote:

Ayes: 5 Noes: 0 Abstain: 0 Absent: 1 (Myers).

Commissioner Larson stepped down.

Chair Jostes announced the ten calendar day appeal period.

ACTUAL TIME: 1:42 P.M.

B. APPEAL BY JAMES KAHAN OF A STAFF HEARING OFFICER APPROVAL OF AN APPLICATION OF DAVID TABOR, AGENT FOR ROBERT D. AND DEBORAH D. HART, 3408 & 3412 STATE STREET, APN 053-322-009, C-2/SD-2: COMMERCIAL AND UPPER STATE STREET AREA OVERLAY ZONES, GENERAL PLAN DESIGNATION: GENERAL COMMERCE (MST2004-00704)

The project consists of a proposal to convert an existing two-story, mixed-use building into five condominium units. The existing building consists of 3,436 square feet (net) of office space on the first floor, four (4) two-bedroom apartments on the second floor and eighteen parking spaces. An exception to the physical standard requirements for condominium conversions, to allow only one parking space for each residential unit instead of two, is requested.

The discretionary applications required for this project are:

1. Modification to allow encroachments into the front yard setback along State Street (SBMC§28.45.008);
2. Tentative Subdivision Map for a one-lot subdivision for the conversion of four residential units and one commercial office space into five condominium units (SBMC§27.07); and

3. Condominium Conversion Permit to convert one commercial space and four residential apartments to five condominium units, including an exception to the parking requirements (SBMC§28.88).

On July 19, 2006, a public hearing was held and the Staff Hearing Officer made the required findings and approved the project. This is an appeal of that decision.

The Environmental Analyst has determined that the project is exempt from further environmental review pursuant to the California Environmental Quality Act Guidelines Section 15301 (Existing Facilities).

Case Planner: Kathleen Kennedy, Associate Planner
Email: kkennedy@SantaBarbaraCA.gov

Kathleen Kennedy, Associate Planner, gave the staff presentation, and presented additional documentation in support of the appeal.

Ms. Weiss, Staff hearing Officer (SHO), explained to the Commission the basis for her decision, including that the two-step process is legal and used, and that the SHO has the authority to make decisions on up to 4-unit residential condominium and condominium conversion projects and unlimited commercial condominium conversions. The "two-step" process involves a project going through an approval process limited to design and building permit review without a public hearing involving land use decisions, such as a condominium or modification, and then requesting a condominium conversion at a later time when the building is either still under construction or recently completed. Staff shares the appellant's concern on whether the two-step process is a good planning process. Recently, the City Council requested that staff explore ways to change the two-step process; however, the Council did not take any immediate action that would send a message to the Commission or to staff to treat these projects differently from what the Code currently provides. Therefore, it is staff's contention that the SHO review of the project was consistent with current Code. The only condition added during the condominium conversion process that was different from the ABR review was the dedication of additional right-of-way.

Commissioners' comments and questions:

1. Asked for clarification of the two-step process and why the City is disregarding the standard five-year period of rental unit housing before accepting applications for condominium conversions.
2. Asked why the parking is described as an exception and not a modification, and to explain the difference between them.
3. Asked whether the S-D-2 overlay zone requires development plans as part of the process.
4. Asked about the number of parking spaces previously reviewed.
5. Asked Mr. Vincent about the 10-day appeal process.
6. Asked for clarification of the condominium conversion finding at the end of the last paragraph, Item C "...when the building is in compliance *in all respects* with the Zoning Ordinance".

7. Stated that it appears that the residential square footage exceeds 50% of the total project square footage, in which case the parking reduction for the residential units in a mixed-use project would not apply.

Ms. Weiss responded that, since the five-year period was amended in 1992, as long as the units meet current condominium standards, staff can process a requested condominium conversion within the first five years following Certificates of Occupancy for the new units.

Ms. Hubbell explained that the condominium conversion process allows less parking by way of an exception, instead of a modification, and because the condo conversion ordinance requires two parking spaces per unit, without regarding to the mixed-use parking reduction, an exception is required.

Ms. Hubbell explained that, there is no development plan approval specific to the S-D-2 zone and, since there is no increase in commercial square footage, no development plan under Measure E is required.

Ms. Kennedy suggested that an earlier version of the plans may have included 21 parking spaces.

Mr. Vincent explained about the appeal process of 10 calendar days, with allowable acceptance of an appeal on an extended day, only if the 10th appeal day falls upon a weekend or holiday.

Mr. Vincent explained about requests for condominium conversion where frequently the application does not comply with strict zoning where you must approve the modification in order to make the findings. Ms. Hubbell clarified and concurred about possibilities of legally non-conforming condominium conversions.

Ms. Weiss stated that the parking should be brought up to Code, but that is not related to the 50% rule regarding making additions to non-conforming buildings. Applicants are allowed to make conforming additions no matter what the percentage to an existing non-conforming building, and as long as any new additional percentage is brought up to Code, than there is conformance.

Mr. Vincent clarified that, separate from the parking requirement, in order to approve the findings for the Tentative Subdivision Map; the project must be found in compliance with the Zoning Ordinance and is the reason for the modification request for the front yard setback in the S-D-2 Overlay Zone.

Ms. Weiss stated that, in order to meet the mixed-use development rule regarding reduced parking requirements, the applicant's options include reducing the size of the residential area or increasing the size of the commercial area, or the applicant may request a modification. The parking exception being requested is a separate issue.

Mr. Jim Kahan, 3709 Dixon Street, requested a break in Commission session.

MOTION: White/Jacobs

To suspend the agenda for discussion on the administrative items.

This motion carried by the following vote:

Ayes: 6 Noes: 0 Abstain: 0 Absent: 1 (Myers)

Chair Jostes announced a suspension of the discussion at 2:15 P.M. The discussion resumed at 2:20 P.M.

Mr. Kahan made the appellant's presentation

Mr. David Tabor made the applicant's presentation.

Chair Jostes opened the public hearing at 2:54 PM.

The following members of the public expressed support of the appeal:

Ms. Mickey Flacks, 1603 Garden Street.

Ms. Michael Self, 2636 Tallant Road.

Ms. Naomi Kovacs, 916 Anacapa Street, Executive Director of the Citizen's Planning Association.

Mr. Paul Hernadi, 3720 Hitchcock Ranch Road.

Ms. Cheri Rae McKinney, 610 E. Victoria Street.

Mr. Gil Berry, Yankee Farm Road, supported the appeal, and questioned the noise study results, and purported higher than 62 decibels noise report, and stated he didn't believe there was enough room for a storage unit on the site and the didn't approve of the process of how the application received approval.

Mr. David Landecker, 2101 Mountain Avenue, President of Citizens Planning Committee, supported the appeal, did not support the two-step flip process of apartments to condominium conversion for the neighborhood and the City, and the neglect of appropriate application process and review.

The public hearing was closed at 3:15 P.M.

Additional Commissioners' comments and questions:

1. Asked whether storage has been provided and whether there is enough square footage to comply with the requirements for the condominium conversion. Asked whether the outdoor space needs to adhere to the 60 decibel noise requirement, and commented that this rental project was not an exception, but an overlooked requirement which escaped staff scrutiny.

3. Asked how Mr. Kahan claimed the project had a higher noise decibel than the reported 62.5 decibel level.
4. Asked if storage, to comply with the mixed use requirements, counts as square footage.
5. Asked about percentage of condominium units that are rentals, and requested that such information be available for future deliberation of the Commission.
6. Asked if it would be reasonable for the Commission to request the removal of the 480 square-feet of existing non-conforming construction within the 20 foot setback of the SD2 zone.

Mr. Tabor responded that the 300 cubic feet of storage has not yet been constructed but will be taken care of at the end of the application process along with other items like the paved-over front landscaping area, and that the storage will be located near the parking spaces for the units along the building behind the stairways.

Ms. Hubbell responded that residential development occurs through a variety of permitting processes, with some requiring design and discretionary environmental review, and sometimes additional levels of analysis for discretionary land-use review such as SHO and Planning Commission. The City uses a noise contour map to determine and measure both interior and exterior compliance with noise decibel restrictions. At 60-70 decibels, the ABR staff usually requests a noise study to be consistent with the General Plan.

Mr. Kahan stated that the project could have been designed to preserve the views and address the noise issues, and attempted to review the environmental review analysis of the noise levels, but the records were missing, so he did not have the information to substantiate his conjecture that the noise decibel levels are higher than stated in the Staff Report.

Mr. Kahan stated that he was not given the opportunity to review the Tentative Subdivision Map or environmental review records, requested that the Map state it does not comply with the Zoning, that the storage seems to use up square footage, and that the project should comply with all review requirements.

Ms. Hubbell confirmed that storage space does count as square footage if it extends down to the ground level as it does for the project, but that the staircase would count against square footage availability.

Ms. Hubbell responded that, although there has been an increase over time in the number of residential units built for ownership, including both single-family and condominium units, the actual percentage of renters has remained stable.

Mr. Vincent clarified that, under the City's non-conforming ordinance, the 480 foot existing non-conforming construction would be allowed to stay providing the new construction does not exacerbate existing non-conforming construction. New construction into the S-D-2 setback should never have been approved, but the City is now legally prevented from enforcing the setback requirement since the construction was allowed in conformance by building permits issued by the City in error. He clarified that staff is capable of addressing

the building inconsistencies submitted by Mr. Kahan, but they now should be addressed as code enforcement issues.

Ms. Weiss commented on the possibility of altering existing buildings or structures to be articulated further into the existing setback instead of complete removal of the existing structure as part of making findings for approval of new construction.

Mr. Vincent stated the development does not satisfy the 50% mixed-use parking requirement, and therefore cannot meet the design requirements, and any approval cannot be upheld.

Ms. Hubbell suggested either upholding the appeal and deny the application or deny the appeal and uphold the SHO determination to approve the application.

Commissioners' comments and questions:

1. Requested that the square footage be accurately included in the Staff Report.
2. Stated that there are three possible options; the Commission can uphold the appeal, deny the appeal or tinker with the project. Commented that it would be wrong to deny the appeal and thus reward condo conversions that do not closely follow the City's policies and procedures.
3. Stated that the storage should be shown; that the design is not pedestrian friendly and the applicant should study the possibility of one curb cut instead of two, the pedestrian connection to the street should be improved, and the building should be back 10 feet; there should be no modifications; and the plat height of the first floor is high and something should be done to reduce the apparent height.
4. Commented that could not make the findings that the proposed project is consistent with zoning for S-D-2 and will therefore uphold the appeal.
5. Commented believes that this was passed through under the two-step process and that all issues of such noise, storage, and building plans should be resolved, and would support and uphold the appeal.
6. Stated support for the appeal, but defended the "two-step" process due to the cost of condominium construction insurance, especially for small projects and small-time developers. However, it needs to be a transparent process, where it is clear from the beginning that the units will become condos, which was not the case for this project. Noted that many condos are rented and they pay good taxes. Asked, given the cost of construction, if building rentals makes any sense?
7. Commented understands the difficulties of the proposed project with legal non-conforming into the SD2 setback, but project lacks adequate landscaping and pedestrian amenities, does not work as a condominium conversion to provide enough parking or safe storage, the noise issue is not addressed, the stairs and elevators were not allotted enough space so the rooms violate 50% mixed-use rule, and the emerging vision of S-D-2 uptown development has not been honored, therefore, cannot support a continuance and supports the appeal.
8. Commented cannot make the finding for general plan consistency to satisfy noise level requirements, lacks a pedestrian-friendly feel from the street, and therefore supports the appeal.

9. Requested a delineation of two motions to provide clarity with one motion to deny the setback modification and the reasons the Commission cannot make the findings due to the explanation given for SD2 overlay and illegal construction within that zone, and then make a second motion regarding the condominium conversion.

Mr. Vincent requested that decisions by the Commission reflect the link between the discussion and the findings regarding the modification and the separate reasons the Commission cannot make the findings for the condominium conversion and subdivision map.

Mr. Tabor commented that he believed there was a disservice done in the presentation of last minute information as if it were factual without giving him the opportunity to respond to this information to the Commission.

MOTION: Jacobs/Thompson

To uphold the appeal, deny the project and deny the request for modification with the Commission unable to make the findings in support of the condominium conversion as the provisions of the Condominium Conversion Ordinance have not been met.

AMENDED MOTION: Jacobs/Thompson

Assigned Resolution No. 045-06

To uphold the appeal and deny the front yard setback modification as the findings cannot be made in relation to the vision of the S-D-2 zone and the broader vision for an uptown design standard and that the Commission cannot make the finding that it is necessary to secure an appropriate improvement on the lot, promote uniformity of improvement or prevent unreasonable hardship.

This motion carried by the following vote:

Ayes: 6 Noes: 0 Abstain: 0 Absent: 1 (Myers)

Chair Jostes announced the ten calendar day appeal period.

MOTION 2: Jacobs/Mahan

Assigned Resolution No. 045-06

To uphold the appeal and deny the Tentative Subdivision Map And Condominium Conversion Permit with the Commission unable to find that all provisions of the Condominium Conversion Ordinance have been met per SBMC§28.88.120, and unable to find consistency with the Noise Element of the City's General Plan, with inadequate parking and storage safety issues still to be addressed, the 50% mixed-use development rule is not being met as it relates to parking, the square footages of the stairs and elevator areas are not accounted for in the plans, and the unresolved noise issue on the State Street balconies continue to be a concern.

This motion carried by the following vote:

Ayes: 6 Noes: 0 Abstain: 0 Absent: 1 (Myers)

Chair Jostes announced the ten calendar day appeal period.

Chair Jostes announced a break at 4:07 P.M. The meeting reconvened at 4:27 P.M.

NI. NEW ITEMS:

A. THE FOLLOWING ITEM HAS BEEN CONTINUED TO THE NOVEMBER 9, 2006 MEETING.

APPLICATION OF KEVIN DUMAIN OF DESIGNARC, ARCHITECT FOR MARCELA CACERES, 1617 & 1621 ANACAPA STREET, APN 027-182-008 & -009, R-3/R-O, LIMITED MULTIPLE FAMILY RESIDENCE AND RESTRICTED OFFICE ZONES, GENERAL PLAN DESIGNATION: RESIDENTIAL, TWELVE UNITS/ACRE (MST2005-00409) CONTINUED TO NOVEMBER 9, 2006

The project consists of a proposal to merge two existing lots and expand the existing 1,334 square foot Bright Start day care center currently located at 1617 Anacapa St. Enrollment would increase from 27 to 60 children. The existing 1,245 square foot apartment located on the first floor of 1621 Anacapa Street would be remodeled to accommodate the expanded day care center and the two second floor apartments would remain. The two required residential parking spaces would be provided onsite. Seven of the eleven parking spaces required for the day care center would be provided through an off-site parking agreement with First Church of Christ, Scientist. Four on street parking spaces along the frontage of the site would be green striped to provide for the loading and unloading of passengers. A new six foot high acoustical sound fence is proposed along the perimeter of the site.

The discretionary applications required for this project are:

4. Modification to allow encroachments into the required setbacks (SBMC§28.21.085);
5. Modification to allow a parking space to encroach into the required front yard setback (SBMC§28.90.001.9);
6. Modification to allow less than the required number of commercial parking spaces (SBMC§28.90.100.J.18.a);
7. Conditional Use Permit to allow the expansion of the existing day care center (SBMC§28.94.030.G); and
8. Development Plan Approval for 1,245 square feet (net) of new nonresidential square footage (SBMC§28.87.300).

The Environmental Analyst has determined that the project is exempt from further environmental review pursuant to the California Environmental Quality Act Guidelines Section 15303 (conversion of small structures).

Case Planner: Kathleen Kennedy, Associate Planner
Email: kkennedy@SantaBarbaraCA.gov



City of Santa Barbara California

CITY OF SANTA BARBARA PLANNING COMMISSION

RESOLUTION NO. 045-06

3408 & 3412 STATE STREET

MODIFICATION, TENTATIVE SUBDIVISION MAP AND CONDOMINIUM CONVERSION PERMIT

NOVEMBER 2, 2006

APPEAL BY JAMES KAHAN OF A STAFF HEARING OFFICER APPROVAL OF AN APPLICATION OF DAVID TABOR, AGENT FOR ROBERT D. AND DEBORAH D. HART, 3408 & 3412 STATE STREET, APN 053-322-009, C-2/SD-2: COMMERCIAL AND UPPER STATE STREET AREA OVERLAY ZONES, GENERAL PLAN DESIGNATION: GENERAL COMMERCE (MST2004-00704)

The project consists of a proposal to convert an existing two-story, mixed-use building into five condominium units. The existing building consists of 3,436 square feet (net) of office space on the first floor, four (4) two-bedroom apartments on the second floor and eighteen parking spaces. An exception to the physical standard requirements for condominium conversions, to allow only one parking space for each residential unit instead of two, is requested.

The discretionary applications required for this project are:

1. Modification to allow encroachments into the front yard setback along State Street (SBMC§28.45.008);
2. Tentative Subdivision Map for a one-lot subdivision for the conversion of four residential units and one commercial office space into five condominium units (SBMC§27.07); and
3. Condominium Conversion Permit to convert one commercial space and four residential apartments to five condominium units, including an exception to the parking requirements (SBMC§28.88).

On July 19, 2006, a public hearing was held and the Staff Hearing Officer made the required findings and approved the project. This is an appeal of that decision.

The Environmental Analyst has determined that the project is exempt from further environmental review pursuant to the California Environmental Quality Act Guidelines Section 15301 (Existing Facilities).

WHEREAS, the Planning Commission has held the required public hearing on the above application, and the Applicant was present.

WHEREAS, seven people appeared to speak in favor of the appeal, and no one appeared to speak in opposition thereto, and the following exhibits were presented for the record:

1. Staff Report with Attachments, November 2, 2006
2. Site Plans

3. Correspondence received in support of the appeal:
 - a. Jim Kahan, 3709 Dixon Street, Santa Barbara, CA 93105
 - b. Cheri Rae McKinney, submitted at public hearing
 - c. Richard Moss, 12 E. Mission Street, Santa Barbara, CA
 - d. John & Anna Devore, 429 Stanley Drive, Santa Barbara, CA 93105
 - e. Naomi Kovacs, Citizens Planning Association, Santa Barbara, CA

NOW, THEREFORE BE IT RESOLVED that the City Planning Commission:

Upheld the appeal and denied the subject application, as follows:

Deny the front yard setback modification as the findings cannot be made in relation to the vision of the S-D-2 zone and the broader vision for an uptown design standard that the Commission cannot make the finding that it is necessary to secure an appropriate improvement on the lot, promote uniformity of improvement or prevent unreasonable hardship.

This motion was passed and adopted on the 2nd day of November, 2006 by the Planning Commission of the City of Santa Barbara, by the following vote:

AYES: 6 NOES: 0 ABSTAIN: 0 ABSENT: 1 (Myers)


Deny the Tentative Subdivision Map and Condominium Conversion Permit with the Commission unable to find that all provisions of the Condominium Conversion Ordinance have been met as per SBMC§28.88.120, and unable to find consistency with the Noise Element of the City's General Plan, with inadequate parking and storage safety issues still to be addressed, the 50% mixed-use development rule as it relates to parking is not being met, the square footages of the stairs and elevator areas are not accounted for in the plans, and the unresolved noise issue on the State Street balconies continue to be a concern.

This motion was passed and adopted on the 2nd day of November, 2006 by the Planning Commission of the City of Santa Barbara, by the following vote:

AYES: 6 NOES: 0 ABSTAIN: 0 ABSENT: 1 (Myers)

I hereby certify that this Resolution correctly reflects the action taken by the City of Santa Barbara Planning Commission at its meeting of the above date.


Kathleen Goo, Acting Planning Commission Secretary


Date

THIS ACTION OF THE PLANNING COMMISSION CAN BE APPEALED TO THE CITY COUNCIL WITHIN TEN (10) DAYS AFTER THE DATE THE ACTION WAS TAKEN BY THE PLANNING COMMISSION.



City of Santa Barbara California

CITY OF SANTA BARBARA STAFF HEARING OFFICER

RESOLUTION NO. 042-06

3408 AND 3412 STATE STREET

MODIFICATION, TENTATIVE SUBDIVISION MAP AND CONDOMINIUM CONVERSION PERMIT

JULY 19 2006

APPLICATION OF DAVID TABOR, AGENT FOR ROBERT D. AND DEBORAH D. HART, PROPERTY OWNERS, 3408 & 3412 STATE STREET, APN 053-322-009, C-2/SD-2: COMMERCIAL AND UPPER STATE STREET AREA OVERLAY ZONES, GENERAL PLAN DESIGNATION: GENERAL COMMERCE (MST2004-00704)

The project consists of a proposal to convert an existing two-story, mixed-use building into five condominium units. The existing building consists of 3,436 square feet (net) of office space on the first floor, four (4) two-bedroom apartments on the second floor and eighteen parking spaces. An exception to the physical standard requirements for condominium conversions, to allow only one parking space for each residential unit instead of two, is requested.

The discretionary applications required for this project are:

1. Modification to allow encroachments into the front yard setback along State Street (SBMC§28.45.008);
2. Tentative Subdivision Map for a one-lot subdivision for the conversion of four residential units and one commercial office space into five condominium units (SBMC§27.07); and
3. Condominium Conversion Permit to convert one commercial space and four residential apartments to five condominium units, including an exception to the parking requirements (SBMC§28.88).

The Environmental Analyst has determined that the project is exempt from further environmental review pursuant to the California Environmental Quality Act Guidelines Section 15301 (Existing Facilities).

WHEREAS, the Staff Hearing Officer has held the required public hearing on the above application, and the Applicant was present.

WHEREAS, no one appeared to speak in favor of or in opposition thereto, and the following exhibits were presented for the record:

1. Staff Report with Attachments, July 19, 2006.
2. Site Plans

NOW, THEREFORE BE IT RESOLVED that the City Staff Hearing Officer:

I. Approved the subject application making the following findings and determinations:

A. Front Yard Setback Modification (SBMC§28.45.008)

The modification to allow the first floor additions to encroach into the front yard setback along State Street is consistent with the purposes and intent of the Zoning Ordinance, is necessary to secure an appropriate improvement on a lot, promote uniformity of improvement and prevent unreasonable hardship. The setback of the project is generally consistent with many other buildings on the northerly side of State Street between Las Positas/ San Roque Roads and Ontare Road and the building's second story is set back 26 feet.

B. Exceptions To The Physical Standards For Condominium Conversions (SBMC§28.88.040.N)

The economic impact of meeting the standard of providing two parking spaces per residential unit is not justified by the benefits of doing so and the project includes design features or amenities which offset the project's failure to meet the standard. Additionally, parking demand will be met by sharing commercial spaces for this mixed use project. The project complies with the mixed use parking requirement.

C. Tentative Map (SBMC §27.07.100)

The tentative subdivision map is consistent with the General Plan and the Zoning Ordinance of the City of Santa Barbara. The site is physically suitable for the proposed condominium conversion and the density of development, and the proposed use is consistent with the vision for this neighborhood of the General Plan. The design of the project is not likely to cause substantial environmental damage, and associated improvements will not cause serious public health problems or conflict with easements, acquired by the public at large, for access through or use of property within the proposed development.

D. Condominium Conversion (SBMC§28.88.120)

1. All provisions of the Condominium Conversion Ordinance are met and the project will not be detrimental to the health, safety, and general welfare of the community.
2. The proposed conversion is consistent with the General Plan of the City of Santa Barbara.
3. The proposed conversion will conform to the Santa Barbara Municipal Code in effect at the time the application was deemed complete, except as otherwise provided in the Condominium Conversion Ordinance.
4. The overall design (including project amenities) and physical condition of the conversion will result in a project, which is aesthetically attractive, safe, and of quality construction.

5. The units have not been "affordable rental units" therefore; affordability restrictions do not apply to the project.
6. The project is exempt from the provisions of Section 28.88.130 because the project consists of fewer than five residential units.
7. The Applicant has not engaged in coercive retaliatory action regarding the tenants after the submittal of the first application for City review through the date of approval.

II. Said approval is subject to the following conditions:

In consideration of the project approval granted by the Staff Hearing Officer and for the benefit of the owners and occupants of the Real Property, the owners and occupants of adjacent real property and the public generally, the following terms and conditions are imposed on the use, possession and enjoyment of the Real Property:

- A. **Recorded Agreement.** The following conditions shall be imposed on the use, possession and enjoyment of the Real Property and shall be memorialized in an "Agreement Relating to Subdivision Map Conditions Imposed on Real Property" reviewed and approved as to form and content by the City Attorney, Community Development Director and/or Public Works Director that shall be executed by the Owners concurrent with the Final Map, and recorded by the City prior to issuance of a Certificate of Occupancy for the condominium conversion permit. Said agreement(s) shall be recorded in the Office of the County Recorder:
 1. **Uninterrupted Water Flow.** The Owner shall provide for the uninterrupted flow of water through the Real Property including, but not limited to, swales, natural watercourses, conduits and any access road, as appropriate. The Owner is responsible for the adequacy of any project related drainage facilities and for the continued maintenance thereof in a manner which will preclude any hazard of life, health or damage to the Real Property or any adjoining property.
 2. **Recreational Vehicle Storage Prohibition.** No recreational vehicles, boats or trailers shall be stored on the Real Property.
 3. **Landscape Plan Compliance.** The Owner shall comply with the Landscape Plan as approved by the Architectural Board of Review (ABR) on April 12, 2004. Such plan shall not be modified unless prior written approval is obtained from the ABR. The landscaping on the Real Property shall be provided and maintained in accordance with said landscape plan.
 4. **Approved Development.** The development of the Real Property approved by the Staff Hearing Officer on July 19, 2006 is limited to the conversion of one commercial space and four apartments to five condominium units and the improvements shown on the plans signed by the Staff Hearing Officer on said date and on file at the City of Santa Barbara.

5. **Storm Water Pollution Control Systems Maintenance.** The Owner(s) shall maintain drainage system, storm drain water interceptor and other storm water pollution control devices in accordance with the approved Operations and Maintenance Procedure Plan.
6. **Required Private Covenants.** Prior to the issuance of a Certificate of Occupancy for any residential condominium unit or the sale of any residential condominium unit within the subdivision, whichever comes first, the Owners shall record in the official records of Santa Barbara County either private covenants, a reciprocal easement agreement, or a similar agreement which, among other things, shall provide for all of the following:
 - a. **Common Area Maintenance.** An express method for the appropriate and regular maintenance of the common areas, common access ways, common utilities and other similar shared or common facilities or improvements of the development, including the private storm drain system and shared sewer laterals, which methodology shall also provide for an appropriate cost-sharing of such regular maintenance among the various owners of the condominium parcels.
 - b. **Designated Spaces Available for Parking.** A covenant that includes a requirement that all designated parking spaces be kept open and available for the parking of vehicles owned by the residents of the property in the manner for which the parking spaces were designed and permitted.
 - c. **Landscape Maintenance.** A covenant that provides that the landscaping shown on the approved Landscaping Plan shall be maintained and preserved at all times in accordance with the Plan.
 - d. **Trash and Recycling.** A covenant that includes a requirement that adequate space shall be provided and maintained for trash and recycling purposes.
 - e. **Covenant Enforcement.** A covenant that permits each owner to contractually enforce the terms of the private covenants, reciprocal easement agreement, or similar agreement required by this condition.
- B. **Public Works Submittal Prior to Final Map Recordation.** Owners shall submit the following or evidence of completion of the following to the Public Works Department prior to the recordation of the Parcel Map.
 1. **Building Permit Required for Conversion.** Evidence that a conversion permit has been issued for the conversion of one office space and four apartments to condominiums. Landscape plan shall show restoration of the planter at the southwest corner.
 2. **State Street Public Improvements.** The Owner shall submit building plans for construction of improvements along the subject property road frontage on State

Street. As determined by the Public Works Department, the improvements shall include 14 inch sidewalk expansion across driveway and removal of portion of curb along driveway perpendicular to sidewalk. The building plans shall be prepared by a registered civil engineer or licensed architect and reviewed by the City Engineer.

3. **Final Map Preparation.** Owners shall submit a Final Map to the Public Works Department acceptable for recordation. The Final Map shall be prepared by a licensed land surveyor or registered civil engineer in conformance with current Subdivision Map Act and in conformance with the requirements of the City Survey Control Ordinance.
4. **Dedication.** Dedication of variable width easement to the City for sidewalk purposes as shown on the Tentative Subdivision Map and offered on the Final Map.
5. **Conditions on Plans/Signatures.** All Planning Commission Conditions of Approval shall be provided on a full size drawing sheet as part of the drawing sets. A statement shall also be placed on the above sheet as follows: The undersigned have read and understand the above conditions, and agree to abide by any and all conditions which is their usual and customary responsibility to perform, and which are within their authority to perform.

Signed:

_____ Property Owner		_____ Date
_____ Contractor	_____ Date	_____ License No.
_____ Architect	_____ Date	_____ License No.
_____ Engineer	_____ Date	_____ License No.

- C. **Prior to Certificate of Occupancy.** Prior to issuance of the Certificate of Occupancy for the condominium conversion permit, the Owners of the Real Property shall submit the following or evidence of completion of the following to the Public Works Department:
1. Recordation of Final Map.
 2. Recordation of the Agreement Relating to Subdivision Map Conditions Imposed on Real Property.

3. Repair any damaged public improvements (curbs, gutters, sidewalks, etc.) subject to the review and approval of the Public Works Department. Where tree roots are the cause of the damage, the roots shall be pruned under the direction of the City Arborist.
4. Public improvements constructed as shown on the building plans.

D. **Litigation Indemnification Agreement.** In the event the Planning Commission approval of the Project is appealed to the City Council, Applicant/Owner hereby agrees to defend the City, its officers, employees, agents, consultants and independent contractors ("City's Agents") from any third party legal challenge to the City Council's denial of the appeal and approval of the Project, including, but not limited to, challenges filed pursuant to the California Environmental Quality Act (collectively "Claims"). Applicant/Owner further agrees to indemnify and hold harmless the City and the City's Agents from any award of attorney fees or court costs made in connection with any Claim.

Applicant/owner shall execute a written agreement, in a form approved by the City Attorney, evidencing the foregoing commitments of defense and indemnification within thirty (30) days of the City Council denial of the appeal and approval of the Project. These commitments of defense and indemnification are material conditions of the approval of the Project. If Applicant/Owner fails to execute the required defense and indemnification agreement within the time allotted, the Project approval shall become null and void absent subsequent acceptance of the agreement by the City, which acceptance shall be within the City's sole and absolute discretion. Nothing contained in this condition shall prevent the City or the City's Agents from independently defending any Claim. If the City or the City's Agents decide to independently defend a Claim, the City and the City's Agents shall bear their own attorney fees, expenses and costs of that independent defense.

This motion was passed and adopted on the 19 day of July, 2006 by the Staff Hearing Officer of the City of Santa Barbara.

I hereby certify that this Resolution correctly reflects the action taken by the City of Santa Barbara Staff Hearing Officer at its meeting of the above date.

Kathleen Goo, Staff Hearing Officer Secretary

Date

PLEASE BE ADVISED:

1. This action of the Staff Hearing Officer can be appealed to the Planning Commission or the City Council within ten (10) days after the date the action was taken by the Staff Hearing Officer.
2. If you have any existing zoning violations on the property, other than those included in the conditions above, they must be corrected within thirty (30) days of this action.
3. **PLEASE NOTE: A copy of this resolution shall be reproduced on the first sheet of the drawings submitted with the application for a building permit.** The location, size and design of the construction proposed in the application for the building permit shall not deviate from the location, size and design of construction approved in this modification.
4. **NOTICE OF TENTATIVE SUBDIVISION MAP AND CONDOMINIUM CONVERSIONS TIME LIMITS:**

The Planning Commission's action approving the Tentative Map shall expire two (2) years from the date of approval. The subdivider may request an extension of this time period in accordance with Santa Barbara Municipal Code §27.07.110 or the provisions of the California Subdivision Map Act.

Kennedy, Kathleen

From: Paul Hernadi [hernadip@english.ucsb.edu]
Sent: Thursday, July 20, 2006 12:16 PM
To: Kennedy, Kathleen; Hubbell, Jan; Community Development PC Secretary; Weiss, Bettie; Ledbetter, John
Cc: Casey, Paul; David Landecker; Naomi Kovacs; louseboucher@aol.com; audubon society
Subject: URGENT: Please review SHO's decision about 2408-3412 State Street

Please distribute to Planning Commissioners as e-mail before and as hard copy at today's meetings

Dear Chair Jostes and Planning Commissioners:

Time permitting, the administrative agenda of your meeting today may include a review of the positive decision by the Staff Hearing Officer concerning a proposed condominium conversion at 3408-3412 State Street.

Certain details about this case came to the attention of CPA's South Coast Land Use Committee on Monday but, unfortunately, none of us had the opportunity to review the staff report and conditions of approval before Wednesday's hearing by the SHO. We couldn't, of course, come up with a well-informed committee request or recommendation but I feel confident in predicting that the Committee would greatly appreciate if you considered the following points in your review of the case whenever it occurs:

1. This is a conversion of rental units to residential condominiums and, in that respect, analogous to the case at 85 North La Cumbre whose recent approval by the Planning Commission has been appealed to City Council with a review date of July 25.
2. The approval would entail the approval of a major front setback modification. The existing two-story building was approved in 2004 without the benefit of a modification to allow encroachments into the front yard setback, and the current project therefore requires what amounts to the irregular retroactive approval of a major modification.
3. The requested parking modification to allow for shared use of the available space may, if approved, aggravate the uptown commercial parking shortage and may preempt possible recommendations of the current Upper State Street Study.

In view of the listed circumstances, I hope that you will consider this application in need of further study by the Planning Commission with more broadly based public input than it has received so far.

Sincerely,

Paul Hernadi

Paul Hernadi
hernadip@english.ucsb.edu
<http://www.english.ucsb.edu/faculty/hernadip/>



CITIZENS PLANNING ASSOCIATION OF SANTA BARBARA COUNTY, INC.
916 Anacapa Street, Santa Barbara, CA 93101
phone (805) 966-3979 • toll free (877) 966-3979 • fax (805) 966-3970
www.citizensplanning.org • info@citizensplanning.org

DISTRIBUTED TO: DATE: 10/12/06
PLANNING COMMISSION (7)
SR. PLANNER, ASST. CITY ATTY.
CASE PLANNER APPLICANT(S)
AGENT PC SEC, ENTERED AS INT
PARTY ON DATE: _____
BY: _____

17 October 2006

Chair Jostes & Planning Commissioners
Santa Barbara City Planning Commission
P.O. Box 1990
Santa Barbara, CA 93102-1990

Re: 3408- 3412 State Street (Century 21) Condo Conversion

Dear Chair Jostes and Planning Commissioners,

CPA's LUC supports the current appeal of the Staff Hearing Officer's approval of the condominium conversion referenced above. We believe that more public input and full Planning Commission deliberation are needed for evaluating a number of the approval's implications:

1. The SHO's approval was granted and is being appealed at a time when Planning Commission and City Council have begun refocusing on the need to protect the city's stock of rental housing against the increasing number of condominium projects that propose to demolish or convert rental properties. The case in question is especially objectionable because the proposal is to convert very recently completed apartments that were approved by the city under policies and procedures applicable to rental properties -- a "two-step flip" if there ever was one.
2. The SHO's approval entailed an irregular retroactive approval of a major front setback modification. We note that the now existing two-story building was approved in 2004 without the benefit of a needed modification to allow encroachments into the required front yard setback. Such an oversight may not have occurred if the original application had been for condominiums rather than apartments. Furthermore, the more intense scrutiny usually given to condominium applications may have led to objections concerning the project's size, bulk, and scale, thereby preventing the now existing blockage of significant mountain views from the popular bus stop directly across the street. It appears, therefore, that Planning Commission would reward the development proposal's piecemeal strategy (first rental, then condominium application within two years) if it were to uphold the SHO's approval.
3. The requested parking modification to allow for shared use of the available space may, if approved, aggravate the uptown commercial parking shortage and may preempt implementing possible recommendations of the current Upper State Street Study and Improvement Plan about parking policies for mixed-use buildings.
4. Last but not least, it was mentioned in our committee discussion of the appeal that the SHO may not have been qualified to hear a case which involves a total of five rather than four units (one commercial and four residential condominiums).

We thank you in advance for your attention to this matter.

Sincerely,

Naomi Kovacs
Executive Director

PH:nk

3709 DIXON STREET
(FORMERLY MAGNOLIA LANE)
SANTA BARBARA, CALIFORNIA
93105-2419

JAMES O. KAHAN
ATTORNEY AT LAW

DISTRIBUTED TO: DATE: 11/1/06
PLANNING COMMISSION (7)
SR. PLANNER, ASST. CITY ATTY. 2
CASE PLANNER APPLICANT(S)
AGENT PC SEC, ENTERED AS INT
PARTY ON DATE: _____
BY TELEPHONE (805) 682-2972
FACSIMILE (805) 682-8914
E-MAIL jok@kahansb.com

October 30, 2006

Planning Commission
City of Santa Barbara
630 Garden Street
Santa Barbara, CA 93101

RECEIVED

OCT 31 2006

CITY OF SANTA BARBARA/
PLANNING DIVISION

Re: Century 21, 3408 & 3412 State Street (MST2004-00704)

Chair Jostes and Planning Commissioners:

This is a bad Project that never should have been approved for the two-story addition of 4 apartments that totally altered the pre-existing building and clearly violated the SD-2 setback along the north side of State Street and blocked mountain views. If that were not bad enough, the condominium conversion process added even more reasons why the Project should not be approved, some of which are set forth in this Supplement to my appeal and its attachments. There a multitude of reasons why the decisions of the Staff Hearing Officer should be reversed and this appeal should be granted. I urge you to grant this appeal.

1. SUMMARY

The impact of this Project transcends the actual Project at 3408 and 3412 State Street and would establish many bad precedents for (i) Outer State Street, (ii) how the City treats projects that violate the law and (iii) the City's concern for the preservation of its rental housing stock. It is my belief that this Project would never have been approved if the initial application had been for a condominium conversion rather than for apartments. This is a bad Project that should never have been approved for apartments. And there are even more reasons that it should not be approved for conversion to condominiums. This Project has so many defects and problems that it should be summarily denied.

Neither the facts nor law support the granting of a modification of the zoning laws. (see Sections 5 and 7). Even if a modification were granted, the law would not approve a Condominium Conversion permit or a Tentative Subdivision Map. (Sections 7, 8, 9 and 10) The Applicants should not be rewarded by permitting them to gain an undeserved windfall by obtaining a condominium conversion permit.

There are many other reasons that this Project should be denied. This Project requires a Development review and approval, but none was given. (see Sections 5 and 6) The Applicants for this Project thought that they found a clever way to avoid environmental review by obtaining an approval without an environmental analysis and then seeking an approval that circumvented

the environmental laws because of an exception for an existing building. To permit such an evasion would make a mockery of the environmental laws. (see Section 11) This Project does not even come close to complying with the Upper State Street Design Guidelines because it neither respects nor complies with the setbacks, size, bulk and scale of existing, adjacent buildings (7-11 convenience store and Your Choice Thai restaurant). (see Section 12) The Staff Hearing Officer did not have the authority to grant the approvals, because she does not have the authority to approve (1) modifications which involve a tentative subdivision map or development plan or (2) or condominium conversions that involve more than four condominium units. (see Section 13) Inadequate notice was given even though I had repeatedly requested notice of any hearing or other discretionary decision related to this Project. However, I did not even receive notice of the hearing by the Staff Hearing Officer, even though a mailing label lists my name. (see Section 14) Public Records were destroyed although I had outstanding request pursuant to the California Public Records Act. The unavailability of these records has significantly hindered my investigation for this appeal. (see Section 15) The Planning Commission did not have adequate time to review the approval which had been given by the Staff Hearing Officer on the previous day. (see Section 16) This Project is in a parking deficit area and the construction of this Project reduced the number of available parking spaces on the lot where this Project was constructed. Moreover, at least 22 parking spaces are required, not the 18 spaces that are referred to in the Staff Report. This Project with inadequate parking should not be approved. (see Section 17) Approval of this Project would be detrimental to the City's Rental Housing Stock and it is hard to argue that Santa Barbara needs more market rate housing. Approval of this condominium conversion does not increase the housing stock. It merely increases the number of expensive condominiums (unsold) and reduces the amount of the rental housing stock. (see Section 18) This Project should not be approved because it does not have adequate landscaping, green open space or comply with the parking design requirements in the parking Code. (see Section 19) The constructed Project does not conform to the plans and there has been illegal parking in the southwest corner in the front of the trash enclosure. (see Section 20)

Good planning has brought about some great things on Outer State for more than three decades. In the late 1970s and early 1980s, the unsightly pole signs were required to be removed upon the completion of a fair and reasonable amortization period. The SD-2 Overlay Zone also has done some great things for Outer State Street. Over the past 27 years since its adoption we have seen the gradual expansion of setbacks. Unfortunately, major problems have been associated where exceptions (modifications) to the setback and/or parking requirements were made (Surgical Center & Trader Joe's on De La Vina, the commercial center on the southwest corner of State Street & La Cumbre Road which has been occupied by numerous restaurants that have closed & Peet's Coffee and the Fidelity Building & condos at State Street & Hope Avenue).

If this Project and Fidelity are examples of mixed use in Outer State, I do not want to see any more mixed use projects in Uptown. I urge you not to create another bad precedent by approving this Project.

It is my strong belief that Applicants should not be rewarded for violating the law or concealing

facts by using a two step approach. Many of the details are set forth below, in the attached Exhibits and other documents and images that will be filed.

2. INTRODUCTION

The Applicants started to violate the zoning law on September 9, 2004 when they started construction of an addition of four second story apartments which encroached into the required front yard in the SD-2 Overlay Zone. (see Chronology that is marked Exhibit 1) and they started the two step approach by filing a Condominium Conversion Application three weeks later. I think that we all agree that it is wrong to violate the zoning laws. I think that we all agree that the Community Development Department should do more to enforce zoning violations. (I understand that the Community Development Department has limited resources.) I would hope that we all agree that lawbreakers should not be rewarded for violating the law. However, the granting of the modification and other approvals that have been appealed would reward lawbreakers by making discretionary decisions which gave them a gift to which they were not entitled, namely the right to have an unjust windfall profit from being allowed to sell condominiums.

On April 11, 2006, Danny Kato sent me two e-mails which responded to my two e-mails about the zoning violation at Century 21 wherein he states that "Our previous conclusion that the Century 21 building conforms to zoning was incorrect. A minor portion of the building that (sic) encroaches into the front yard setback, and the plans should have been revised or a Modification approved prior to building permit issuance." (see Appeal Exhibit E to Appeal, page 1 attached as Exhibit A to the Staff Report). Mr. Kato sent a subsequent e-mail that stated "I misread the City Attorney's direction regarding the enforcement of these encroachments, and therefore wrote you incorrectly below. If the applicant does not pursue any discretionary approvals, the City will not enforce on these encroachments, as they have approved building permits. If the applicant does not pursue any discretionary approvals, Planning Staff will process the as-built Modifications or work with the applicant to redesign the project." In order to be approved, the requested modification, condominium conversion permit and tentative subdivision map need discretionary approvals. I believe that neither the law nor the facts support such approvals. The Planning Commission should grant the appeal and deny the three requested approvals.

This Project is a Mediterranean monster, which has been likened to a hovercraft and is not appropriate for the lot or uptown State Street. It might work on a larger lot in an urban area. It is well described in Santa Barbara News-Press article on February 4, 2006 that described the addition of condominiums as a "Once humble, small, one-story building that few would have noticed, the office is now a Mediterranean structure that invites a double take." (see Exhibit 2) The pictures in this article clearly show how the mountain views were blocked and how the finished Project was more than a mere reconstruction of a non-conforming structure. It is the first and only two-story Project that violates the setback requirements and blocks mountain views on the north side of upper State Street since the adoption of the SD-2 Overlay Zone. Moreover, it violates Mahan's Rule that setbacks should be proportional to the size of the

buildings. However, there are not even any setbacks for the portions of the structure next to the sidewalk along State Street. The creators of this bad Project, which could establish a bad precedent for Uptown, should not be rewarded and be given more by approving a condominium conversion.

Unfortunately, I have not been able to access the ABR file which would have contained pictures of the pre-existing conditions and views because the ABR file was destroyed on February 17, 2006 despite the fact that I had filed a formal Public Records Act request for it on January 13, 2006 (see Exhibit 3). Fortunately, the file had a picture of the south facade and southerly portion of the easterly facade of the pre-existing building and planting. (Exhibit 4)

3. STATEMENT OF FACTS

The earliest building that I have found for this site was a Minnie Pearl Chicken Restaurant with 2,395 sq. ft. that was constructed in 1969. (Exhibit 5) The Fashion Barn added an addition of 980 sq. ft. (for a total of 3,375 sq. ft.) in 1977 which was substantially the same as the building that existed prior to the massive remodel and addition of the apartments. (Exhibit 6). This one-story addition, which encroached into the setback, beat the clock because it was constructed two years before the SD-2 Overlay Zone was adopted. An application for the four apartments was approved on September 9, 2006. Three weeks later (September 30), the two step switch formally started when an application for a condominium conversion was filed.

The application, dated September 30, 2004, described the building as an addition of 3,822 sq. ft. and a deck with 789 sq. ft. with 3,762 sq. ft. of commercial space. Architectural Board of Review (ABR) - concept review of an addition described as a "proposal to construct a 3,702 square feet second story addition to an existing 3,762 square foot commercial building. [I cannot account for creation of 387 square feet above the approved 3,375 sq. ft. other than to guess that the greater number for existing commercial space was used so that the residential addition would not more than 50 % of the total Project.]

4. CONTEXT

This Project would not be so bad if it were on a larger lot outside of Uptown. It is another example of trying to stuff too much into too little. Moreover, it is inconsistent with the adjacent properties on the block. The one-story 7-11 convenience store (to immediate west) is significantly setback from State Street. The one-story Thai restaurant "Second Choice" (to the immediate east) is also setback and is much smaller in size, bulk and scale. The Century 21 building is highly visible and sticks out like a sore thumb. I do not understand why somebody would construct this massive building, that is out of scale for anything in the area, and violates the zoning law in such a visible place.

5. ZONING REQUIREMENTS

Santa Barbara Municipal Code Section 28.45.008 contains limitations in the SD-2 and states, in most relevant part, as follows:

"A. LOCATION. The S-D-2 zone is applied to the "Upper State Street Area" which is defined as the area bounded by Alamar Avenue, U.S. Highway 101, Foothill Road and State Highway 154.

B. LEGISLATIVE INTENT. It is the purpose of the S-D-2 Zone to impose certain traffic related restrictions greater than those provided in the basic zones in which lots in the "Upper State Street Area" are classified. State Street is the only major east-west surface street serving the Upper State Street Area and it is one of the most heavily traveled streets in the City. In order to prevent the volumes of traffic on State Street from exceeding acceptable limits and to limit increased air pollution, due to vehicular traffic, it is necessary to impose the traffic related restrictions contained in this section on new developments in the area. In order to ensure the appropriateness of developments in said area, and the mitigation of traffic impacts where possible, it is necessary that development plans for said developments be reviewed.

C. DEVELOPMENT POTENTIAL. Notwithstanding any provision of law to the contrary, no application for a land use permit for a nonresidential construction project will be accepted or approved on or after December 6, 1989 unless the project complies with the provisions outlined in General Provisions, Development Plan Approval, Section 28.87.300.

D. STANDARDS. The following standards shall apply to all projects in the S-D-2 Zone:

1. Parking Requirements. Off-street parking shall be provided as required in Chapter 28.90 of this Title.

4. Front Yard Setbacks. There shall be a front yard of not less than ten (10) feet for one story buildings not exceeding fifteen (15) feet in height and not less than twenty (20) feet for two and three story buildings not exceeding forty-five (45) feet in height."

On February 24, 2006, I initially questioned why a front yard setback of 20 feet was not required for this Project under the SD-2 zoning (see Exhibit A to Appeal). The Community Development Department initially asserted that the Project complied with the zoning and a modification was not needed. (see Exhibit B to Appeal). This assertion was incorrect and I supplied specifics to the City. (see Exhibit C to Appeal). The City eventually admitted that its initial assertion was incorrect and a 20 foot front yard setback is required for this Project. (see Exhibit E to Appeal) Since there is agreement that a modification is needed, there is no need to argue why none conforming exceptions do not apply to this Project.

Prior to my raising of the requirement of a front yard setback of 20 feet, nobody in the City

raised this requirement despite numerous hearings before the Architectural Board of Review and at least three major staff reviews (PRT and DART).

6. NO DEVELOPMENT PLAN REVIEW

Santa Barbara Municipal Code Section 28.45.007.C requires development review and approval pursuant to Santa Barbara Municipal Code Section 28.87.300. However, no such approval, much less such review, was given for this Project. I request that a project of this size, impact and precedent setting nature (exceeding 7,000 sq. ft. on State Street which is the first structure constructed on the north side of State Street that blocks mountain views that does not have the required setback since the adoption of the SD-2 Overlay Zone) should have had a full review. .

7. FACTS DO NOT SUPPORT GRANTING OF A ZONING MODIFICATION

The granting of modifications of the Zoning Ordinance is a discretionary act and can only be granted in certain conditions. The requirements for a modification of the setback requirements require the following findings:

1. The modification is consistent with the purposes of this Title,
2. The modification is consistent with the intent of this Title, AND
3. The modification is necessary to:
 - A. secure an appropriate improvement on a lot,
 - B. prevent unreasonable hardship
 - C. promote uniformity of improvement, or
 - D. is necessary to construct a housing development which is affordable to very low-, low-, moderate- or middle-income households.

The facts do not support the making of the first two required findings nor do they support making any of the other findings under the third grouping. It was both the purpose and intent of the SD-2 Overlay Zone to limit development along upper State Street. This oversized building, which is not adequately setback and blocks mountain views, is not an appropriate improvement for the site. There is no unreasonable hardship that requires the granting of a modification. Any hardship involved in this Project was self induced by people that should have known better (an experienced architect and at least two knowledgeable real estate brokers). This development does not promote uniformity of improvement. Instead, it establishes a bad precedent for upper State Street, especially in light of the fact that the building to the west is one story and is significantly setback and the building to the east is one story and is also setback.

Santa Barbara Municipal Code Section 28.92.110 grants the authorization for modifications of Zoning Ordinance and establishes specific conditions which must be met and states as follows:

- “Modifications may be granted by the Planning Commission or Staff Hearing Officer as follows:
- A. BY THE PLANNING COMMISSION. The Planning Commission may permit the following:

1. A modification or waiver of the parking or loading requirements where, in the particular instance, the modification will not be inconsistent with the purposes and intent of this Title and will not cause an increase in the demand for parking space or loading space in the immediate area.
2. A modification of yard, lot and floor area regulations where the modification is consistent with the purposes and intent of this Title, and is necessary to (i) secure an appropriate improvement on a lot, (ii) prevent unreasonable hardship, (iii) promote uniformity of improvement, or (iv) the modification is necessary to construct a housing development which is affordable to very low-, low-, moderate- or middle-income households.

B. BY THE STAFF HEARING OFFICER. The Staff Hearing Officer may permit modifications in accordance with subsections 1., 2., 3., 4., and 5. above, if the Staff Hearing Officer finds that:

1. The requested modification is not part of the approval of a tentative subdivision map, conditional use permit, development plan, site plan, plot plan, or any other matter which requires approval of the Planning Commission; and
2. If granted, the modification would not significantly affect persons or property owners other than those entitled to notice."

Moreover, the Staff Hearing Officer did not have authority to approve a modification in this case because this Project requires a tentative map and a development plan approval.

8. CONDOMINIUM CONVERSION IS NOT PERMITTED

S. B. M. C. Section 28.88.030.C (Requirements and Procedures) expressly prevents this condominium conversion. It states:

No existing building containing a dwelling unit shall be approved for conversion to a condominium or hotel unless it meets the standards set forth in the following requirements:

C. All buildings sought to be converted are, on the date of conversion, in all respects in compliance with the Zoning Ordinance and the goals and policies of the General Plan, or legally nonconforming therewith.
(emphasis added)

Moreover, this building is barred from conversion unless five years have elapsed after the issuance of a certificate of occupancy. S. B. M. C. Section 28.88.030.D states:

"Once a building permit has been issued, a building may not be converted unless the certificate of occupancy for the building was issued more than five (5) years prior to the date the owner files with the City an application for the approval of a tentative condominium map or conversion to a hotel or similar use, unless the building satisfies the City's requirements for new condominium construction."

Moreover, I do not believe that the facts or law support the findings necessary to approve the condominium conversion as set forth in Section IV.D. of the Recommendations in the Staff Report.

9. THIS PROJECT DOES NOT COMPLY WITH NOISE ELEMENT OR ITS GUIDELINES

The Staff Report (Section III.D) recognizes that the proposed Condominium Conversion does not comply with the noise requirements set forth in the General Plan and the Noise Element Compatibility Guidelines, but does not attach a copy of the Applicants' Noise Report which trashes the Project. For your convenience, I have attached a copy of that Noise Report which is attached as Exhibit 7. It states, in most relevant part, that:

"The real estate office is on the ground floor and the 4 residential units are on the second floor. Three of the units have open decks overlooking State Street. The primary exterior noise source at these units is the traffic on State Street. The fourth unit deck is on the side of the building away from State Street and is not impacted by the street traffic.

The primary community noise is traffic noise from State Street. Compounding the noise problem are the bus stops directly in front and across the street. Additional noise is generated by the stop and go of traffic at the street signal just west of the building.

The exterior 62.5 CNEL is above the 60 CNEL targeted limit. Sound levels for some sound barrier heights at the exterior railings were calculated. The results are in Table 1. A solid barrier (glass or Lexan) 4-foot high may reduce the deck sound levels below 60 CNEL. The reduction will not be as great as Tabulated because of reflections off the ceiling and back wall. Also, any sound barrier must be airtight at the base and junctions with the building walls to achieve optimum noise reduction. This presents a problem of drainage for the exterior decks.

In conclusion, the significant noise source at the units is traffic noise from State Street. Based on field measurements and calculations, the future interior noise levels will be well below 45 CNEL. The units meet the requirements of the Administrative Code. **Although exterior deck noise levels facing State Street are above 60 CNEL, any noise barriers to reduce the level below 60 CNEL would reduce the natural air circulation on the deck and create a drainage problem.**" [emphasis added]

Excusing Applicants from compliance by merely requiring them to obtain approval of noise reduction construction from the ABR at some later date is inappropriate and inconsistent with the observations in the Applicants' own Noise Report. What guarantee is there that the ABR would grant such approval, especially when the Applicants' own Noise Report states that such noise

protection would reduce the natural air circulation and cause drainage problems.

It is my understanding that the General Plan noise element limits are intended to keep people from living in unhealthy conditions. It should make no difference if the noisy space is within the "required open yard area" or other space to be used by the occupants. If it is a violation of the health and safety standards of the City, why let it happen?

At least one member of the ABR has suggested that the Project that was constructed is not consistent with the ABR approval. There are some very questionable things related to the earlier ABR approval. This is even more significant in light of the destruction of the ABR records violation of the Public Records Act. Finally the Planning Commission does not have the authority to delegate its authority to make findings on compliance with the Noise Element and its guidelines to another body (ABR).

I think that I know why the noise issues were not part of the hearing before the Staff Hearing Officer, but that is not entirely relevant. It also raises two other questions. Is the noise element the reason that this Project was built as an apartment with the belief the Applicants could get a waiver as a conversion project but could not obtain an initial approval as a condominium project? Is this one big illegal project intended to avoid the spirit and intent of City standards just to do a favor for someone?) The many illegal aspects of this Project raise the reasonable and quite serious concern that favoritism has been and is involved in the decision-making process.

10. TENTATIVE SUBDIVISION MAP DOES NOT COMPLY WITH ALL ELEMENTS OF THE GENERAL PLAN OR ZONING

In order to approve a Tentative Subdivision Map, it must be found that the project on the Tentative Map complies with both all elements of the General Plan and the Zoning. However, this Project does not comply with the General Plan or zoning. Hence, it cannot be approved.

11. THIS PROJECT MAKES A MOCKERY OF THE ENVIRONMENTAL LAWS

This Project makes a mockery of the environmental laws. It is my strong belief that this Project would never have been approved if the Applicants had come clean, and initially applied for a condominium conversion. This Project was approved as apartments with little scrutiny and subsequently constructed. It is absurd to suggest that now it is exempt from environmental analysis under CEQA Guideline 15301 that exempts existing facilities. Using a two step approach is not appropriate to undermine a fair environmental analysis and the planning process. CEQA Guideline 15301 was adopted as a tool to circumvent environmental analysis and was not intended for this type of conversion, especially when the Applicants attempted to evade the environmental laws and other reviews with a two-step approach that did not disclose their actual attempt to circumvent the law.

12. NON-COMPLIANCE WITH UPPER STATE AREA DESIGN GUIDELINES

The proposed Project does not comply with the Upper State Street Design Guidelines. The most obvious non-compliances are set forth in the following Guidelines:

“Architectural Style:

All styles of architecture must be compatible with their respective neighborhood and must also enhance Santa Barbara's distinctive architecture by designs which are in the context of the ambiance and charm which exemplifies Santa Barbara.

Site Planning:

The planning and design of the site should take into account that parking is preferred behind the building rather than fronting on the street. Ease and safety of ingress and egress should be given careful consideration. **Buildings should have setbacks from the street in scale with their height and mass, and respecting the setbacks of adjacent buildings.** [emphasis added] See Private Property Landscaping below.

Building Height:

Building heights should be in scale and proportion with their setbacks and should be compatible with adjacent buildings.
Buildings must have human scale.” [emphasis added]

As I stated earlier, this building does not enhance the charm (smaller scale and setbacks) of most recent construction along Uptown State Street. This building does not have setbacks in scale to its height and mass and does not respect the setbacks of adjacent buildings (7-11 convenience store and “Your Choice” Thai restaurant). Moreover, the building height is not compatible with the adjacent buildings on the block. And the size, bulk, scale and proportions of the Project are out of scale for the area.

13. STAFF HEARING OFFICER DID NOT HAVE AUTHORITY TO APPROVE THE MODIFICATION, THE CONDOMINIUM CONVERSION OR THE TENTATIVE MAP

S. B. M. C. 27.03.B.2 only authorizes the Staff Hearing Officer to approve subdivisions with four or less condominium units. However, this subdivision contains five condominium units - four residential units and one commercial unit.

Santa Barbara Municipal Code Section 28.92.110.B does not grant the authorization to the Staff

Hearing Officer for modifications of the Zoning Ordinance and establishes specific conditions which must be met and states as follows:

“Modifications may be granted by the Planning Commission or Staff Hearing Officer as follows:

B. BY THE STAFF HEARING OFFICER. The Staff Hearing Officer may permit modifications in accordance with subsections 1., 2., 3., 4., and 5. above, if the Staff Hearing Officer finds that:

1. The requested modification is not part of the approval of a **tentative subdivision map**, conditional use permit, **development plan**, site plan, plot plan, or any other matter which requires approval of the Planning Commission; and [emphasis added]
2. If granted, the modification would not significantly affect persons or property owners other than those entitled to notice.”

The Staff Hearing Officer did not have authority to approve a modification in this case because this Project requires a tentative map and a development plan approval.

14. REQUIRED NOTICE WAS NOT GIVEN

The mailing list might indicate that I received notice, but I never received any such notice for a hearing by the Staff Hearing Officer. I will let somebody else attempt to explain what happened.

15. DESTRUCTION OF PUBLIC RECORDS

On January 13, 2006, I made a public records request for files related to 3408 and 3412 State Street (Exhibit 3). However, the ABR records for the apartment Project were destroyed on February 16, 2006. The Staff Report (Exhibit F) contains electronic minutes of the ABR meetings when there was consideration of this marginal Project. However, the actual plans, submittals, audio or video recordings and other documents related to those approvals were destroyed. This destruction has greatly hindered my analysis of what happened with this Project.

Transparency in government is a very important element of good government. The timing of the destruction of these records, for which a specific written request had been made while a citizen was investigating a several specific and dubious projects, is highly suspicious and raises many unfortunate questions.

The destruction of these records for which a specific written request had been made while a citizen was investigating a several specific and dubious projects is highly suspicious and raises many unfortunate questions.

16. REVIEW OF THE APPROVALS BY THE PLANNING COMMISSION WAS NEITHER COMPLETE NOR CORRECT

On July 20, the Planning Commission should have reviewed the approvals which the Staff Hearing Officer made on July 19, but the review by the Planning Commission was rushed and incomplete. One Planning Commissioner raised questions about the propriety of those approvals, but nothing happened. There appears to be at least one procedural error, specifically that the decisions of the Staff Hearing Officer were reviewed pursuant to S. B. M. C. Section 28.92.026. However, I made an on-line search for S. B. M. C. Section 28.92.026 and reviewed a printed version of S. B. M. C. Sections 28.92.010 through 28.92.060 that is appended as Exhibit G to the Staff Report, but I have been unable to find a Section 28.92.026. Where in the Municipal Code does S. B. M. C. Section 28.92.026 exist?

My appeal should be viewed as helping the Planning Commission, not placing barriers in its way.

17. THE PARKING FOR THIS PROJECT IS NOT ADEQUATE

The Upper State Street is a parking deficit area and exceptions to the minimum parking requirements should not be made. To the contrary, I believe that greater parking requirements should be imposed in this parking deficit area. In addition, I do not believe that the parking requirements were correctly calculated. The requirement for the commercial unit would be 14 parking spaces (3,436 sq. ft. divided by 250 sq. ft. and any fraction thereof). S.B.M.C. Section 28.90.100.G. requires 8 parking spaces for the residential use (4 condominiums times 2 spaces) for a total (minimum) of 22 parking spaces, not the 18 that Staff states is the required amount.

It also should also be emphasized that the construction of this addition reduced the number of parking spaces on the lots where Century 21 is located. For reasons unknown to me the existing parking set-up is not very welcoming to the extent that people have been observed parking on the 7-11 or Your Choice properties and then walking into Century 21. This overflow might work now, but what happens when the properties where 7-11 and Your Choice properties are developed? Good planning requires that the parking needs for the future be addressed.

Somebody might argue that the parking requirements are subject to a 50% reduction pursuant to S. B. M. C. Section 28.90.H.1.a, but there is no entitlement to such a reduction because the residential uses (especially when the decks are included) occupy more than 50% of the development.

18. APPROVAL OF A CONDOMINIUM CONVERSION WOULD DAMAGE SANTA BARBARA'S THE RENTAL HOUSING STOCK

It is important to protect Santa Barbara's rental housing stock. A good argument can be made that Santa Barbara has enough market rate housing and that only affordable housing is needed. Unfortunately, not many apartments have been built in recent years. Therefore, it is especially

important that we protect our limited housing stock.

Approval of this condominium conversion does not increase the housing stock. It merely increases the number of expensive condominiums (unsold) and reduces the amount of the rental housing stock. Approval of this Project would set a bad example for the destruction of our rental housing stock and should be denied.

19. INADEQUATE LANDSCAPING AND GREEN OPEN SPACE AND
NON-COMPLIANCE WITH THE DESIGN REQUIREMENT IN THE PARKING CODE

There is a notation in the ABR digital notes for January 6, 2003 that states "A modification is required for the 10 percent open space." What happened to that requirement for 10 percent open-space? I do not believe that such open-space exists. Paved parking spaces and driveways should not be counted as open-space. Moreover, the existing parking for this Project does not comply with the landscaping or design requirements contained in S. B. M. C. Chapter 28.90.

The pre-existing Century 21 building was relatively soft and was setback with a border of green landscaping instead of present higher wall that is both cold and harsh to pedestrians. However, the present design is built right to the sidewalk without the previous separation of landscaping. The landscaping does not appear to meet the City requirements and appears to be inadequate.

20. THE CONSTRUCTED PROJECT DOES NOT CONFORM TO THE PLANS
AND THERE HAS BEEN ILLEGAL PARKING IN THE SOUTHWEST CORNER
IN THE FRONT OF THE TRASH ENCLOSURE

The Project that has been constructed does not comply with the approved plans. A glaring violation is in front of the trash enclosure which has been paved, despite the requirement in the plans that the area contain landscaping. The plans indicate that a curb was to run on the southerly side of Parking Space 19 (southwest corner) and then curve into a straight line which finally curves into the northerly wall of the trash enclosure. The plans indicate another curb would start from the southerly wall of the trash enclosure and curve into a straight line that would terminate at the sidewalk. The plans indicate that the area between the trash enclosure and the sidewalk would be landscaped, but it has been paved over and vehicles park in that paved area which is a separate violation of the required setback area. The chimneys do not have caps as required by the plans. The round circular columns, which support the hovercraft over the parking are so massive that they could be used in a multi-story building. Similarly, the decorative columns in front of the Project are also more massive than needed and appear larger than on the plans. A respected architect advised me that the proportions have been altered from the approved plans.

In summary, the Project does not comply with the plans, but I will leave it to the professionals to further evaluate the noncompliance.

Planning Commission
Century 21, 3408 & 3412 State Street (MST2004-00704)
October 30, 2006
Page 14

21.CONCLUSION

I have lived in the Upper State Street area for almost three decades and have a very good knowledge of this area. I hear many comments about developments in this area and I have heard many negative comments about this highly visible, in-your-face development which (i) is too large for the lot, (ii) is not adequately setback and (iii) blocks mountain views. In fact, I have rarely heard anything positive about the Project from my neighbors except for one or two comments that it is a pretty building that should have been built somewhere else. This discretionary Project has something for almost everybody who would like to see it denied.

I respectfully request that all approvals related to this Project be denied and the appeal be granted. There have been too many exceptions and questions relating to this Project to grant any type of approval. There is nothing in the law that requires granting these discretionary approvals. To the contrary, the law prohibits granting these approvals. The many illegal aspects of this Project raise the reasonable and quite serious concern that favoritism is involved in the decision-making process.

Thank you for your consideration.

Sincerely,

James O. Kahan

EXHIBIT LIST

- Exhibit 1. Chronology
- Exhibit 2. News-Press Article, February 4, 2006
- Exhibit 3. Public Records Request, January 13, 2006
- Exhibit 4. South facade and southerly portion of east facade with Century 21 sign
- Exhibit 5. Drawing of Minnie Pearl's Chicken Restaurant - 1969
- Exhibit 6. Proposed addition for Fashion Barn
- Exhibit 7. Noise Report, January 6, 2006

CHRONOLOGY -3408 & 3412 STATE STREET

1969	Minnie Pearl's Chicken Restaurant was constructed - 2,395 sq. ft
1977	Fashion Barn addition (980 sq. ft. for a total of 3,375 sq. ft.)
March 28, 1979	SD-2 Zoning Ordinance adopted (Ordinance No. 3989)
March 5, 1985	Complaint about sign
April 22, 1985	Sign approved for Fashion Barn
November 10, 1988	Robert and Carmen Bree purchase 3412 State Street for an estimated \$950,000 [Documentary Transfer Tax \$1045.00 (\$1.10 per \$1,000)]
January 26, 1989	Sign application for "Century 21 BOB BREE Realty, Inc."
January 17, 1996	Robert and Deborah Hart purchase 3412 State Street for an estimated \$1,195,000 (Documentary Transfer Tax \$320.50 plus reduction of Trust deed for \$840,380)
December 18, 2002	MASTER APPLICATION FOR ADDITION OF FOUR (4) APARTMENTS WITH: <ol style="list-style-type: none">1. An addition of 3,702 sq. feet, a deck of 842 sq. ft. and a complete remodel of first story2. A construction valuation of \$550,000
January 6, 2003	Architectural Board of Review (ABR) - concept review of an addition described as a "proposal to construct a 3,702 square feet second story addition to an existing 3,762 square foot commercial building. [I cannot account for creation of 387 square feet above approved 3,375 sq. ft. of commercial space except there might have been an attempt to show that the residential addition was not more than 50 % of the total project.] *** A modification is required for the 10 percent open space."
January 21	ABR - preliminary approval with indefinite continuance
February 12, 2004	ABR - resubmittal received (another re-submittal on February 17)
March 1	ABR - In-progress review with final approval with contingencies
April 12	ABR - final approval of details
May 7	ABR - Jaime Limon spoke to owner about some additional requirements
September 7	Public Works assigns addresses to future apartments as 3408 A, B, C & D State Street

September 9	BUILDING PERMIT ISSUED
September 30	CONDOMINIUM CONVERSION APPLICATION for addition with 3,822 square feet
November 11	Pre-Application Review Team (PRT) comments with meeting scheduled for November 16, 2004
June 30, 2005	Submittal for Development Team Application Review (DART)
July 29,	DART comments
December 28	CERTIFICATE OF OCCUPANCY ISSUED
January 13, 2006	Kahan makes a formal public information request pursuant to the Public Records Act for 10 projects in Outer State Street area including Century 21 apartments/condo conversion
January 18	Noise Report by Morris Engineering Company that confirms that the Project does not comply with the Noise Element and Noise Element Land Use Compatibility Guidelines filed with 2 nd Submittal for DART Review
January 27	2 nd submittal for DART Review with report about noise impacts
February 4	Article in Santa Barbara News-Press that described the addition of condos as a "Once humble, small, one-story building that few would have noticed, the office is now a Mediterranean structure that invites a double take."
February 17	City files relating to ABR for 3408 & 3412 State Street were destroyed even though there was a public information pursuant to the Public Records Act which requested those records
February 24	2 nd DART comments that mentions nothing about requirement for a zoning modification
February 24	Kahan e-mail to Paul Casey which raises violation of zoning law at Century 21 (3408 & 3412 State Street) and Coffee Bean & Tea Leaf (State and De La Vina Streets) (see Exhibit A to Appeal)
February 28	City Council granted appeal on State Street Lofts
March 10	Danny Kato sends e-mail to Kahan which states that the Century 21 building does not violate the setback requirements because it was permitted as a non-conforming use. (see Exhibit B to Appeal)

March 20	2 nd Kahan e-mail to Paul Casey, Danny Kato and others which explained in detail why there was a zoning violation. (Exhibit C to Appeal)
April 10	Kahan sends e-mail to City Administrator James Armstrong, Casey and others requesting reply to his 2 nd e-mail and that he be given notice of any land use action that the City intends to take in the SD-2 zone. (see Exhibit D to Appeal, page 2)
April 10	Bettie Weiss responds to Kahan's e-mail that was sent earlier that day wherein she confirms that I have and will receive notices for decisions in the SD-2 zone and that I will shortly receive a response to my 2 nd e-mail. (see Exhibit D to Appeal, page 1)
April 11	Danny Kato send Kahan two e-mails which Kahan's two e-mails about the zoning violation at Century 21 wherein he states that "Our previous conclusion that the Century 21 building conforms to zoning was incorrect. A minor portion of the building that encroaches into the front yard setback, and the plans should have been revised or a Modification approved prior to building permit issuance." (see Exhibit E to Appeal, page 1). Mr. Kato sent a subsequent e-mail that stated "I misread the City Attorneys direction regarding the enforcement of these encroachments, and therefore wrote you incorrectly below. If the applicant does not pursue any discretionary approvals, the City will not enforce on these encroachments, as they have approved building permits. If the applicant does not pursue any discretionary approvals, Planning Staff will process the as-built Modifications or work with the applicant to redesign the project."
June 2	Applicant files 4th submittal for condominium conversion
July 12	Staff Report prepared by Kathleen Kennedy
July 19	Staff Hearing Officer (SHO) approves request for (1) Modification, (2) Condominium Conversion Permit and (3) Tentative Subdivision Map
July 31	Kahan files appeal
September 11	Kahan makes another formal public information pursuant to the Public Records Act for 10 for all records relating to 3408 - 3412 State Street which is occupied by Century 21 Real Estate and other uses.
September 22	Kathleen Kennedy advises Kahan that there is "no existing Planning file" for the records that have been requested and the "ABR file for the apartment project" was "purged(destroyed)" on February 17, 2006

- October 16 Kahan sends City an e-mail which makes a supplemental request for documents that were not produced in response to the public records requests
- October 18 Records Supervisor Deana McMillion sends Kahan an e-mail which:
1. Confirms that the ABR file was destroyed on February 17
 2. The MEA referred to in the Staff Report for the SHO does not exist
 3. The Environmental Assessment referred to in the Staff Report for the SHO does not exist
 4. There is no record of the Environmental Assessment and the City does not know who made that Environmental Assessment
 5. Kathleen Kennedy prepared an MEA for this project but it is neither signed nor dated.
 6. There are no documents that support many of the assertions made in the Staff Report for the SHO

CONTRACTOR'S CORNER



STEVE MALONE / NEWS-PRESS

The Century 21 building at 3412 State St. is seen in its current remodeled state. Below is the building prior to the work.

Mediterranean makeover lifts facade, adds condos

Passers-by surely won't recognize the Santa Barbara home of Century 21 A Hart Realty on upper State Street these days. Once a humble, small, one-story building that few would have noticed, the office is now a Mediterranean structure that invites a double take.

Construction on the building began in October 2004 and was completed last month at a cost of more than \$1.6 million.

The two-story structure comprises about 7,600 square feet, double the size of the former office. Real estate agents Bob and Debbie Hart of Santa Barbara are the owners of the property and the business at 3412 State St.

In addition to the real estate office

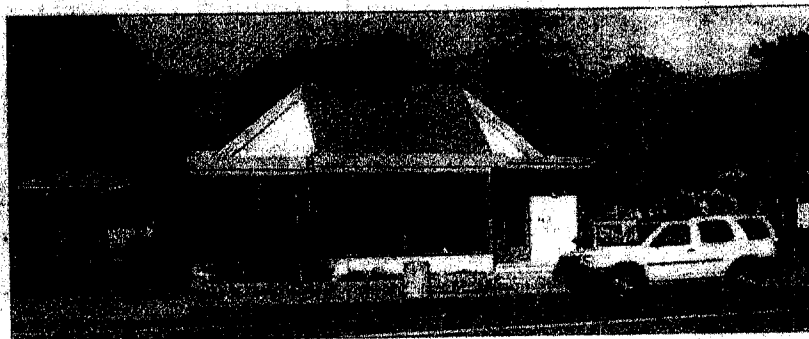
downstairs, the Harts added four residential units on the second floor. Each has two bedrooms and two baths; they range in size from about 875 square feet to 985 square feet.

The Harts plan to put all four units up for sale as condominiums. While they wait for approval from the city to sell the condos as a separate property, they are offering the units for lease with an option to buy.

In order to meet city requirements for creating a new condo development, the Harts had to widen the sidewalks in front of the building.

Don Pedersen of Sugar Land, Texas designed the building, and Melchiori Construction of Santa Barbara was the general contractor.

—Maria Zate



COURTESY OF BOB HART

From: James O. Kahan [jok@kahansb.com]

Sent: Friday, January 13, 2006 4:50 PM

To: Cynthia Rodriquez (cmrodriguez@SantaBarbaraCA.gov);
(DMcMillion@SantaBarbaraCA.gov)

Cc: Brenda Alcazar (balcazar@santaBarbaraCA.gov); Paul Casey
(PCasey@SantaBarbaraCA.gov); BWeiss@SantaBarbaraCA.gov; Janice Hubbell
(JHubbell@SantaBarbaraCA.gov); James Armstrong (jarmstrong@SantaBarbaraCA.gov)

Subject: Public Records Request

Importance: High

Attachments: RequestJanuary13,2006.rtf

Attached to this e-mail and set forth below is Public Records Request. Please contact me if you have any questions.

James O. Kahan
3709 Dixon Street (formerly Magnolia Lane)
Santa Barbara, California 93105-2419
E-mail - jok@kahansb.com
Telephone - 805-682-2972
Fax - 805-682-8914

This request includes, but is not limited to:

1. Permits and discretionary approvals
2. Other reports
3. Actions, discussions, resolutions and minutes of the City Council
4. Actions, discussions, resolutions or minutes of the Planning Commissions
5. Actions, discussions, resolutions or minutes of the Environmental Review Committee
6. Actions, discussions, resolutions or minutes of the Architectural Review Board
7. Actions, discussions or minutes of the any other City Commission, Board, Committee, task force or similar entity
8. Notes of any City entity, officer, or employee that was involved with or considered any of the aforementioned projects.
9. Documents related any environmental review.
10. Recommendations
11. Memoranda
12. Correspondence
13. Notes
14. Plans

For the purpose of the request contained herein, "writing" means any handwriting, typewriting, printing, photostating, photographing, photocopying, transmitting by electronic mail or facsimile, and every other means of recording upon any tangible thing, any form of communication or representation, including letters, words, pictures, sounds, or symbols, or combinations thereof, and any record thereby created, regardless of the manner in which the record has been stored. [Government Code § 6252 (f)]

This request is made pursuant to the California Public Records Act (Government Code § 6250 et seq.). "Public records" include any writing containing information relating to the conduct of the public's business prepared, owned, used, or retained by any state or local agency regardless of physical form or characteristics. [Government Code § 6252 (e)]

This request is also made on the separate ground that these documents are necessary to prepare for an appeal to the City Council which is noticed for February 28, 2006. Therefore, time is of the essence and your prompt reply is requested.

Please notify me as soon as possible (1) if you need anything further from me to comply with this request and (2) when the requested writings will be available for review and possibly duplication. I do not need to review all of these documents at one time. Therefore, you may make partial production of these documents before January 23, 2006.

Thank you for your prompt attention to my request.

Sincerely,

James O. Kahan

JAMES O. KAHAN
ATTORNEY AT LAW

3709 DIXON STREET

TELEPHONE (805) 682-2972

(FORMERLY MAGNOLIA LANE)

FACSIMILE (805) 682-8914

SANTA BARBARA, CALIFORNIA 93105-2419

E-MAIL jok@kahansb.com

January 13, 2006

City of Santa Barbara
Attention City Clerk

Community Development Department
City of Santa Barbara
630 Garden Street
Santa Barbara, CA 93101

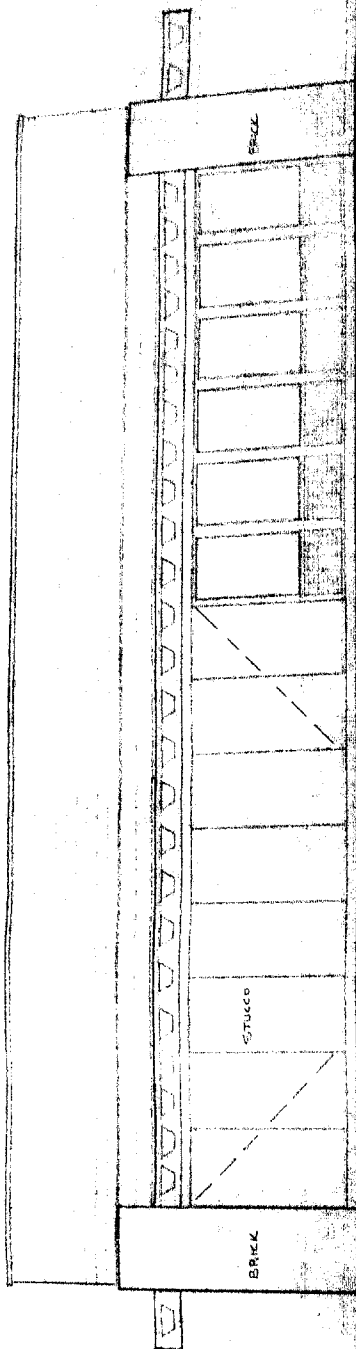
Re: Public Records Request
Outer State

I hereby request to inspect and review each and every writing relating to 10 projects in the S-D-2 area. This request applies to all departments and employees of the City.

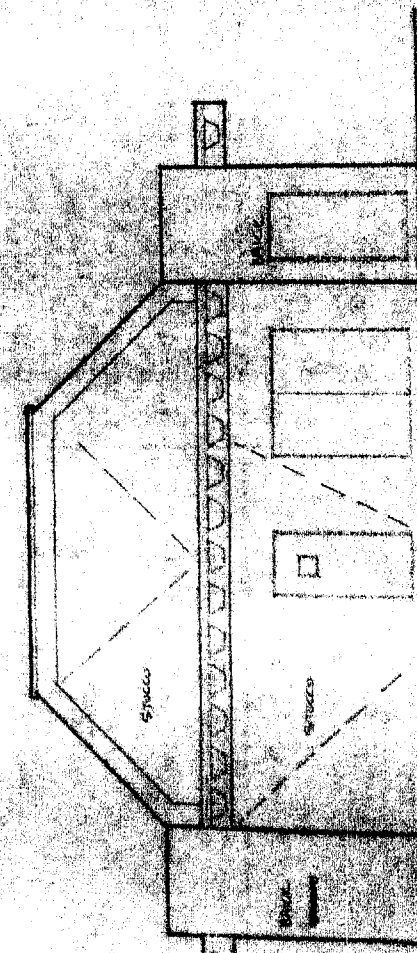
These 10 projects are identified as follows:

1. Lincolnwood subdivision between Arroyo Burro Creek and La Cumbre Road, north of San Remo and south of Cedar Vista. (No records for this project are sought after the date of the filing of the final map for record),
2. Galleria on the southeast corner of State Street and La Cumbre Road.
3. Commercial project on southwest corner of State Street and La Cumbre Road (which now includes Peet's Coffee, Sushi Teri, UPS and other commercial ventures - at one time identified as 3901 or 3905 State Street)
4. Commercial project on the southeast corner of De La Vina Street and Samarkand Drive that now contains the Surgical Center (3045 De La Vina)t
5. Commercial projects Trader Joe's and Gelsons Market that now contains Trader Joe's at 3025 De La Vina Street.
6. The commercial project for the Coffee Bean and Tea Leaf at the intersection of State Street and De La Vina Street that is now occupied by the Coffee Bean and Tea Leaf (3052 De La Vina Street)
7. The mixed use project on the Southeast corner of State Street and Hope Avenue that contains the La Cresta condos (3791 State Street) and the Fidelity (3793 State Street).
8. Century 21/apartments/condo conversion at 3412 State Street)
9. Two story commercial project located at 3060 State Street
10. Two story commercial project now occupied by Bank of the West and First American Title Company (3780 State Street)

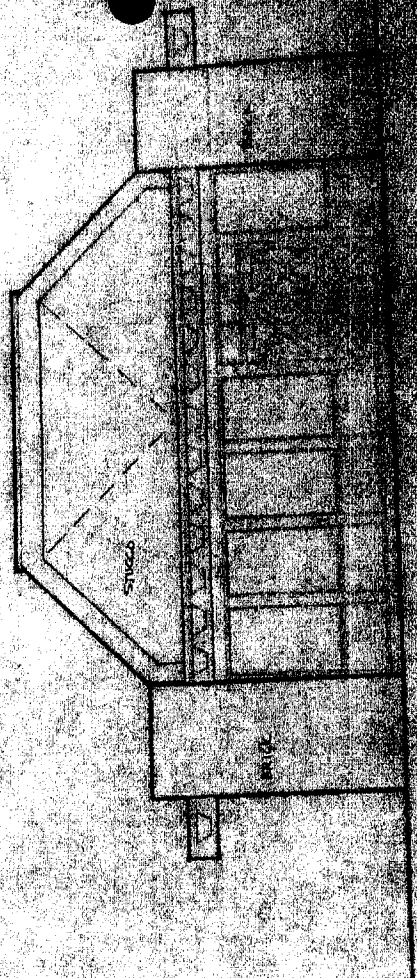
These records for projects identified as Items 2-10 include all records up until the date of issuance of the initial Certificate of Occupancy.



LEFT ELEVATION RIGHT ELEVATION SIMILAR



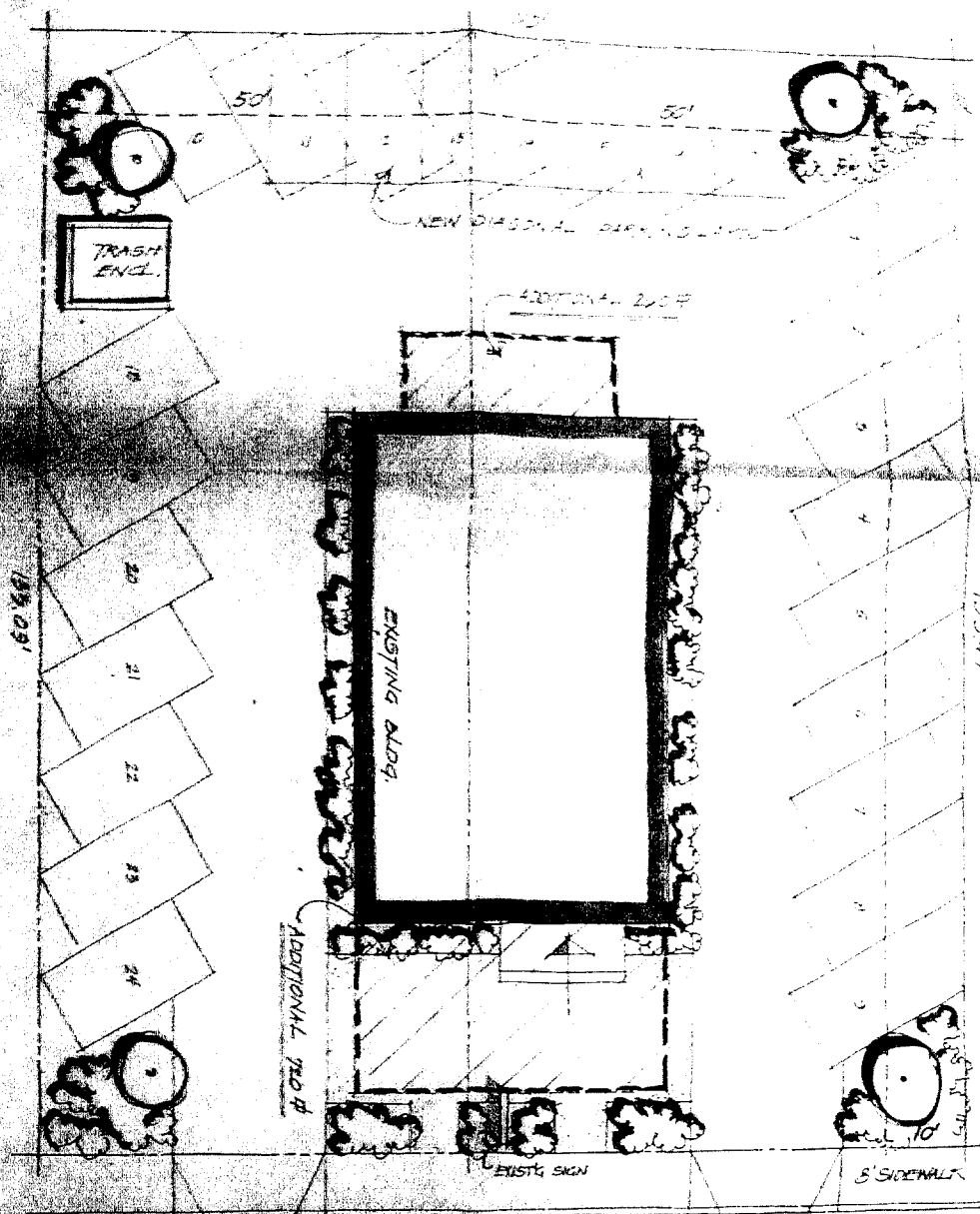
REAR ELEVATION



FRONT ELEVATION

MINNIE PEARL'S CHICKEN RESTAURANT - 1969

drawn by: R. Daniel Lee
 P.O. Box 118, Santa Barbara, CA 93102
 Tel: 805/964-9329



STATE STREET

LEGAL:

LOTS 24 & 25
 SAN ROQUE PARK
 341/2 STATE STREET
 SANTA BARBARA, CA

EXISTING BLDG.:

2,880 SQ. FT.

ADDITION TO BLDG.:

980 SQ. FT.

TOTAL SQ. FT.:

3,860 SQ. FT.

EXISTING PARKING:

24 SPACES

NOTE:

PARKING ORD. REQUIRES
 1 SPACE PER 600 SQ. FT.
 OF BLDG. AREA.
 3,860 ÷ 600 = 6.43 SPACES

DATE: 3/4/2 STATE STREET

Est 6 page 1 of 1

PROPOSED ADDITION

MORRIS ENGINEERING COMPANY

P.O. Box 73, Fillmore, CA 93016-0073 • Ph/Fax: (805) 524-3727 • Email: FarmorBob@earthlink.net
"Sound Advice" - Noise • Pressure Pulsation • Surge • Vibration

January 18, 2006

Mr. Robert Hart
A HART REALTY

3412 State Street
Santa Barbara, CA 93105

Subj.: Noise Impact at Second Story Decks at
3412 State Street, Santa Barbara, CA.

Ref.: MEC S/O A611

Dear Mr. Hart:

Exterior sound levels at the second story decks were measured during peak morning traffic on January 11, 2006. The measured short time equivalent sound levels during peak traffic hours are representative of the 24 hour Community Equivalent Noise Level. The California Administrative Code and the Uniform Building Code (References 1 & 2, Appendix A) require a noise isolation study if residences are within the 60 CNEL (Community Noise Equivalent Level) noise contour. This is to assure that, with windows closed, the interior noise levels from exterior sources do not exceed 45 CNEL in any habitable room. For typical community noises, the Ldn (Day-Night average sound level) is equivalent to CNEL. The peak-hour traffic sound level (Leq) is equivalent to the 24 hour CNEL. Acoustical Terms are in Appendix B.

The real estate office is on the ground floor and the 4 residential units are on the second floor. Three of the units have open decks overlooking State Street. The primary exterior noise source at these units is the traffic on State Street. The fourth unit deck is on the side of the building away from State Street and is not impacted by the street traffic.

The primary community noise is traffic noise from State Street. Compounding the noise problem are the bus stops directly in front and across the street. Additional noise is generated by the stop and go of traffic at the street signal just west of the building.

Peak hour morning traffic noise was measured at units A, B, and D on Wednesday, January 11. The sound level meter microphone was located 3 feet from the deck railing and at ear height (5 feet). The State Street traffic noise was 62.5 Leq on the decks of units A and D (east and west). The deck at unit B has the view of State Street slightly obstructed to the east and west and has a front wall instead of iron railings. Thus the sound level is reduced to 60.5 Leq. Interior sound levels with



doors and windows closed were well below 45 CNEL in all rooms. Measured interior levels were 40 Leq or less.

The exterior 62.5 CNEL is above the 60 CNEL targeted limit. Sound levels for some sound barrier heights at the exterior railings were calculated. The results are in Table 1. A solid barrier (glass or Lexan) 4-foot high may reduce the deck sound levels below 60 CNEL. The reduction will not be as great as Tabulated because of reflections off the ceiling and back wall. Also, any sound barrier must be airtight at the base and junctions with the building walls to achieve optimum noise reduction. This presents a problem of drainage for the exterior decks.

In conclusion, the significant noise source at the units is traffic noise from State Street. Based on field measurements and calculations, the future interior noise levels will be well below 45 CNEL. The units meet the requirements of the Administrative Code. Although exterior deck noise levels facing State Street are above 60 CNEL, any noise barriers to reduce the level below 60 CNEL would reduce the natural air circulation on the deck and create a drainage problem.

If you have any questions, do not hesitate to call me.

Very truly yours,

Robert P. Morris, P.E.
Consultant

Enc.: Table 1 – Traffic Noise Calculations
Appendix A – References
Appendix B – Acoustic Terminology

DISTRIBUTED TO: DATE: 11/1/06
PLANNING COMMISSION (7)
SR. PLANNER, ASST. CITY ATTY. 2
CASE PLANNER APPLICANT(S)
AGENT PC SEC, ENTERED AS INT
PARTY ON DATE:
BY: _____

Kennedy, Kathleen

From: DeVore Family [devore@cox.net]
Sent: Wednesday, November 01, 2006 8:48 PM
To: charmainejacobs@cox.net; john@interactiveplans.com; stellalarson@cox.net;
wmahan@west.net; creatus@bigfoot.com; bendyfish@aol.com
Cc: Hubbell, Jan; Kennedy, Kathleen
Subject: Support of Appeal of Condominium Conversion for Century 21, 3408 & 3412 State Street
(MST2004-00704)

Via email to

Planning Commission
City of Santa Barbara
630 Garden Street
Santa Barbara, CA 93101

Re: Support of Appeal of Condominium Conversion for Century 21, 3408 & 3412 State Street

Chair Jostes and Planning Commissioners:

Work schedules do not allow us to attend the afternoon Planning Commission hearing on 2 November at which the appeal of the condominium conversion for Century 21, 3408 and 3412 State Street will be heard. However we are writing to support this appeal.

We are saddened by the trend to undo and bypass the planning rules of the SD-2 Overlay Zone established for Outer State Street as represented by the decisions made and modifications granted for the subject property. At the recent workshops conducted by the City in connection with the Upper State Street Study the community reiterated the importance of the design elements written into the SD-2 Overlay Zone that help to protect the mountain views to the North of State Street and the wide pedestrian corridor between State Street and the businesses.

We feel that it would be a mistake to reward property owners by granting the condominium conversion. There is a need for residential rental units in this area and that although their retention as rental units does not mitigate the impact of the violation of zoning rules, at least it does afford a community service in exchange.

Therefore, we urge you to uphold the appeal of the condominium conversion. Thank you.

Sincerely,

John and Anna DeVore
429 Stanley Drive
Santa Barbara, CA 93105

Kennedy, Kathleen

DISTRIBUTED TO: DATE: 11/1/06
PLANNING COMMISSION (7)
SR. PLANNER, ASST. CITY ATTY.
CASE PLANNER APPLICANT(S)
AGENT PC SEC, ENTERED AS INT
PARTY ON DATE: _____
BY: _____

From: rmm101r90@cox.net
Sent: Wednesday, November 01, 2006 4:07 PM
To: Kennedy, Kathleen
Cc: jok@kahansb.com
Subject: Appeal by James Kahan 3408 & 3412 State St.

Ms. Kathleen Kennedy, Associate Planner,

I am a concerned citizen residing at 212 E. Mission St. for the past 20 years. The traffic on Upper State becomes more congested every year.

Also as an active member of the Upper East Association, we have noted that this project has already been treated too generously in the granting of variances that allow more encroachment and increased traffic on Upper State.

Please consider my concerns in the disposition of the appeal filed by James Kahan.

Thank you for your professional help on this matter.

Richard Moss
212 E. Mission St.
rmm101r90@cox.net

Comments for Planning Commission 11/3/2006
By Cheri Rae McKinney

Thank you for the opportunity to speak to you today in support of the appeal filed by Mr. Kahan.

The County's State Mandated Ethics Training Course states, "Good government requires the people have confidence in the integrity of its government" That confidence is bolstered when our public officials demonstrate ... "a respect for order, precedent and plain meaning."

This particular case raises many concerns about whether the people can reasonably enjoy such confidence. Clearly, in the granting of the many modifications, the curious destruction of documents when a Public Records Request was in place, and the obvious attempt to sneak a condo conversion through the proper process, this project is not an example we would want to see emulated throughout the City.

Unfortunately, it has taken the efforts of a private citizen to bring these issues forward, when it should have been done properly in the first place.

I ask you to tighten the performance standards by the staff which is entrusted to uphold the policies, procedures, rules and requirements that are supposed to apply to each and every applicant. In this and other projects with which I am

familiar, most notably the St. Francis condominium project, there is a serious process problem going on here. The cumulative effect of the errors, inappropriate decisions and outright violations of policy are undermining the integrity of our City's government and the public's rightful confidence in it.

I ask you to do the right thing and uphold the appeal.

Thank you.